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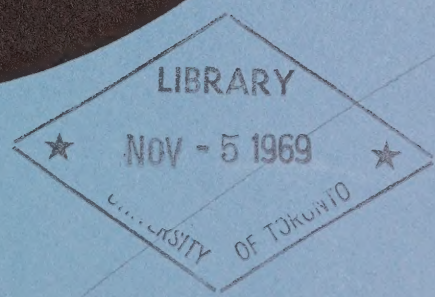
Government
Publications

LY, 1969



ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD

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DURING JULY 1969

BARGAINING AGENTS CERTIFIED DURING JULY

NO VOTE CONDUCTED

15782-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. TORTEX MACHINE WORKS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 476).

15832-68-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (121 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 478).

15970-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SPURRELL'S I.G.A. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT LONDON, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES INCLUDING THE SUBSEQUENT CORRESPONDENCE WHICH WAS RECEIVED).

16012-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WINDSOR SAVE AND EXCEPT ASSISTANT STORE MANAGERS, HEAD CASHIERS, PERSONS ABOVE THE RANK OF HEAD CASHIER AND ASSISTANT STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 482).

16013-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WINDSOR, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIODS." (12 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 485).

16027-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNDAS, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

16028-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNDAS, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, HEAD CASHIERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND HEAD CASHIER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN AND THE REPRESENTATIONS OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 487).

16082-69-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. CHEMICAL DEVELOPMENTS OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL LABORATORY EMPLOYEES OF THE RESPONDENT AT LONGFORD MILLS SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND TO THE FACT THAT THE UNIT OF EMPLOYEES APPLIED FOR IS A "TAG-END UNIT.").

16205-69-R: LABOURERS' INT'L. UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ALBERT BIANCHI, C.O.B. AS ALSI CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, SHOP AND YARD EMPLOYEES AND ENGINEERING STAFF AS PROPOSED." (5 EMPLOYEES IN THE UNIT).

16236-69-R: DELTA EMPLOYEES' ASSOCIATION (APPLICATION) V. DELTA ELECTRONICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES IN THE UNIT).

16241-69-R: LOCAL UNION 550, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. POWELL FOODS LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN ST. CATHARINES, SAVE AND EXCEPT PERSONS ABOVE THE RANK OF SUPERVISOR, PURCHASING AGENT, SECRETARIES TO THE GENERAL MANAGER AND THE PLANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND OPERATING ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16272-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. JACK PEARCEY OIL BURNER SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (2 EMPLOYEES IN THE UNIT).

16283-69-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. I. M. I. UNDERGROUND CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE RESPONDENT'S ELECTRICAL INSTALLATION OPERATIONS WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

(FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM "ELECTRICAL INSTALLATION OPERATIONS" INCLUDES MAINTENANCE WORK INCIDENTAL TO SUCH OPERATIONS).

(SEE INDEXED ENDORSEMENT PAGE 506).

16294-69-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12 L (APPLICANT) v. MARVICPRESS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

16297-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. PREMIER PLASTICS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 508).

16314-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. EASTSIDE OIL BURNER SERVICE FRANK FERRI, PROPRIETOR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (3 EMPLOYEES IN THE UNIT).

16316-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. WM. KNOTT OIL HEATING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (2 EMPLOYEES IN THE UNIT).

16317-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. ALROS PRODUCTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME POLYTARP PRODUCTS (RESPONDENT).

UNIT: "ALL OIL BURNER SERVICE MEN IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 509).

16319-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) v. T. D. SMITH LTD. (RESPONDENT) v. TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF MOUNT FOREST, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT).

16320-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. NUTRIPRODUCTS LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN WHITBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN WHITBY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

16321-69-R: CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, CONSTRUCTION LABOURERS AND TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT, AND EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

16327-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. DUFFERIN MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16337-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BAINES & DAVID LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

16344-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHRISTIE'S BREAD, DIVISION OF NABISCO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

16348-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. DILVAR CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (40 EMPLOYEES IN THE UNIT).

16351-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. LUNDY FENCE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE INSTALLATION AND/OR ERECTION OF FENCES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

16355-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HAMILTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND THE SCHOOL VACATION PERIOD." (167 EMPLOYEES IN THE UNIT).

16359-69-R: T.E.L. COUNCIL OF UNIONS (APPLICANT) V. FALGAR ENTERPRISES AND RENTALS LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT AND EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTENANCE OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING." (67 EMPLOYEES IN THE UNIT).

16366-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHRISTIE'S BREAD DIVISION OF NABISCO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE TOWN OF SIMCOE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

16367-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADA BREAD COMPANY LIMITED (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN EMPLOYED BY THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

16371-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. VENCO METALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (56 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16372-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. VICTORIA ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16373-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) V. JAY ZEE FOOD PRODUCTS LIMITED CARRYING ON
BUSINESS AS HOME JUICE Co.(RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, ONTARIO, SAVE
AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR,
OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS
PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(9 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 513).

16374-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)
V. A & B PRECAST MANUFACTURING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EX-
CEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF." (16 EMPLOYEES IN THE UNIT).

16375-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 (APPLICANT) V. JOHNSON, PATERSON, WILLIAMS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF,
SALES STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK
OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL
FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING
OF OIL BURNERS." (7 EMPLOYEES IN THE UNIT).

16381-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 938, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA (APPLICANT) V. GATEWAY DELIVERY SYSTEMS OF
NORTH BAY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EX-
CEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER
WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 516).

16384-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. FRANKI CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH
AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE

COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16385-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. VEN PAR VENDING EQUIPMENT SALES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (62 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16389-69-R: BRICKLAYERS', STONEMASONS' AND TILESETTERS' UNION No. 2, ONTARIO (AFFILIATED WITH BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA) (APPLICANT) V. McMULLEN & WARNOCK LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16390-69-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C. (APPLICANT) V. BRANTFORD BUILDERS' SUPPLIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 518).

16394-69-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. CORNWALL REGIONAL HOSPITAL LINEN SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR

NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

16400-69-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) V. PUTTERBOUGH BROS. CONSTRUCTION CO. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16401-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) V. THE VALLEY CITY MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16402-69-R: BRICKLAYERS', STONEMASONS' AND TILESETTERS' UNION No. 2, ONTARIO (AFFILIATED WITH BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA) (APPLICANT) V. VROOM CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

16405-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. SINCLAIR SUPPLY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

16406-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. P. OUMET & SONS CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

16409-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALGIMA ORE DIVISION, OF THE ALGOMA STEEL CORPORATION, LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND PAINTERS AT THE COMPANY'S OPERATION AT WAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND UNITED STEELWORKERS OF AMERICA, LOCAL 3933." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND TO THE FACT THAT THIS IS A TAG-END UNIT).

16413-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COLLINS CARTAGE AND STORAGE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT).

16423-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SINCLAIR SUPPLY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (27 EMPLOYEES IN THE UNIT).

16424-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. P. OUMET & SON CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

16425-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. R & Y TOOL AND DIE CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

16439-69-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL NO. 10 (APPLICANT) V. THE SALVATION ARMY TRIUMPH PRESS (RESPONDENT).

UNIT: "ALL PRESSMEN AND ASSISTANT PRESSMEN AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT ITS PLANT IN OAKVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

16440-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. GALCO FOOD PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

16441-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. WELCON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16451-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE LUMMUS COMPANY CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

16452-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. HORTON STEEL WORKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

16353-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. TORONTO ABATTOIRS LTD. (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15412-68-R: OTTAWA TYPOGRAPHICAL UNION NO. 102 (APPLICANT) V. THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED (RESPONDENT) V. OTTAWA NEWSPAPER GUILD, LOCAL 205 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN COMPOSING ROOM WORK AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (59 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD FURTHER DECLARES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS PROOFREADERS AND TELETYPESETTER PERFORATOR OPERATORS ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		59
NUMBER OF PERSONS WHO CAST BALLOTS	59	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	30	
NUMBER OF BALLOTS MARKED IN FAVOUR OF OTTAWA PRINTING CRAFTS UNION	25	

16191-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V.
JOHNSON BROS. TRUCKING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MILTON ENGAGED IN TRUCK-
ING OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF
FOREMAN, OFFICE AND SALES STAFF, AND CASUAL EMPLOYEES WORKING LESS
THAN 24 HOURS PER WEEK." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20	
NUMBER OF BALLOTS MARKED IN FAVOUR OF GENERAL TRUCK DRIVERS UNION LOCAL 230	2	

16206-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. D.
VALENTINI - GENERAL TRUCKING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COPPER CLIFF, SAVE AND
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER
WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	15	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

16108-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT)
V. ZACHARY DE VUONO LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL
UNION OF NORTH AMERICA LOCAL 506 (INTERVENER). (11 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 493).

16109-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT)
V. RIA CONSTRUCTION LIMITED (RESPONDENT) V. BRICKLAYERS, MASONS &
TILESETTERS UNION, LOCAL NO. 2 ONTARIO (INTERVENER). (12 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 502).

16134-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT)
V. MEDITERRANEAN CONSTRUCTION (RESPONDENT) V. LABOURERS' INTERNATIONAL
UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER). (13 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 504).

16211-69-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED (RESPONDENT) V. CANADIAN BUSINESS MACHINE WORKERS UNION (INTERVENER #1) V. CANADIAN OFFICE EMPLOYEES UNION No. 159 N.C.C.L. (INTERVENER #2). (23 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 505).

16309-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. O. J. GAFFNEY LIMITED (RESPONDENT). (11 EMPLOYEES).

16336-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT). (21 EMPLOYEES).

16369-69-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED (RESPONDENT) V. CANADIAN BUSINESS MACHINE WORKERS UNION (INTERVENER). (20 EMPLOYEES).

16395-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE METROPOLITAN TORONTO LIBRARY BOARD (RESPONDENT). (10 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 524).

16407-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL #1988 (APPLICANT) V. PILLAR CONSTRUCTION LTD. (RESPONDENT). (5 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

14781-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LAKEVIEW GENERATING STATION AT MISSISSAUGA, SAVE AND EXCEPT SHIFT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT SUPERVISOR AND FOREMAN, OFFICE STAFF AND TECHNICIANS." (384 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	277
NUMBER OF PERSONS WHO CAST BALLOTS	249
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	94
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	155

16152-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. BLUE SPRING (CANADA) LIMITED (RESPONDENT)

VOTING CONSTITUENCY: "ALL OFFICE EMPLOYEES AND LABORATORY TECHNICIANS OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, SALES SUPERVISORS, SALES REPRESENTATIVES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	18
NUMBER OF PERSONS WHO CAST BALLOTS	18
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

15705-68-R: THE LUMBER AND SAWMILL WORKERS' UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ELK LAKE PLANING MILL LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AND PLANING MILL IN THE TOWNSHIP OF JAMES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (73 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	37
NUMBER OF PERSONS WHO CAST BALLOTS	37
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	31
BALLOTS SEGREGATED AND NOT COUNTED	1

15887-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. WM. O'NEILL CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

16000-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS GROCERY DIVISION WAREHOUSES AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (241 EMPLOYEES IN THE UNIT).

THE BOARD FURTHER STATED IN ITS DECISION DATED JUNE 3RD, 1969: THAT CASUAL EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT.

. . . .

THAT PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD DATED JANUARY 7TH, 1969, ISSUED TO THE BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 267 RELATING TO THE PERSONS COVERED THEREIN OF THE RESPONDENT'S NATIONAL PRODUCE DIVISION ARE NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		225
NUMBER OF PERSONS WHO CAST BALLOTS	219	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	93	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	125	

16040-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. IMPERIAL EASTMAN CORPORATION (CANADA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BARRIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK." (80 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		69
NUMBER OF PERSONS WHO CAST BALLOTS	68	

BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	29
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	37

16155-69-R: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION -
LOCAL 261, OTTAWA (APPLICANT) V. STAN'S CATERING SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT
SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS
REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

16159-69-R: LOCAL #28 INTERNATIONAL BROTHERHOOD OF BOOKBINDERS
(APPLICANT) V. GENERAL BINDING CORPORATION (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN DON MILLS,
ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,
OFFICE, SALES AND SERVICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN
24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	24
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

16358-69-R: T.E.L. COUNCIL OF UNIONS (APPLICANT) V. ARMSTRONG BROTHERS LIMITED (RESPONDENT).

16360-69-R: T.E.L. COUNCIL OF UNIONS (APPLICANT) V. ARMSTRONG HOLDINGS LIMITED (RESPONDENT).

16361-69-R: T.E.L. COUNCIL OF UNIONS (APPLICANT) V. PEEL CONSTRUCTION LIMITED (RESPONDENT).

16362-69-R: T.E.L. COUNCIL OF UNIONS (APPLICANT) V. FALGAR & PEEL (JOINT VENTURE) (RESPONDENT).

16379-69-R: BRICKLAYERS' MASONS' AND TILESETTERS' UNION LOCAL NO 2 ONTARIO (AFFILIATED WITH THE BRICKLAYERS' MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA) (APPLICANT) V. ROSS JOHNSTONE LTD. (RESPONDENT). (3 EMPLOYEES).

16388-69-R: BRICKLAYERS' MASONS' AND TILESETTERS' UNION LOCAL NO 2 ONTARIO (AFFILIATED WITH THE BRICKLAYERS' MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA) (APPLICANT) V. O.B. DODD CONSTRUCTION COMPANY LIMITED (RESPONDENT). (7 EMPLOYEES).

16392-69-R: RETAIL STORE EMPLOYEES UNION LOCAL NO. 832 (APPLICANT) V. SILVER LAKE BEVERAGE CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (9 EMPLOYEES).

16396-69-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION LOCAL 67 OF U.H.C. & M.W.I.U. - C.L.C. (APPLICANT) V. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT). (27 EMPLOYEES).

16414-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COLLINS WAREHOUSING CO. LTD. A DIVISION OF COLLINS CARTAGE AND STORAGE CO. LTD. (RESPONDENT). (23 EMPLOYEES).

16415-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COLLINS CARTAGE, A DIVISION OF COLLINS CARTAGE AND STORAGE CO. LTD. (RESPONDENT). (23 EMPLOYEES).

16418-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. REDLINE PREVENTION SERVICES LTD. (RESPONDENT). (26 EMPLOYEES).

16426-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CHAIRTEX MAN. LTD. (RESPONDENT). (8 EMPLOYEES).

16431-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL 249 KINGSTON ONT. (APPLICANT) V. CANADA GUMITE CO. (RESPONDENT).
(2 EMPLOYEES).

16433-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL
UNION 493 (APPLICANT) V. TONY PORTELANCE PAINTERS (RESPONDENT). (2 EMPLOYEES)

16438-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. TRIANGLE PAVING LIMITED (RESPONDENT). (12 EMPLOYEES).

16454-69-R: TORONTO MOTION PICTURE PROJECTIONIST UNION, LOCAL 173
OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND
MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA
(APPLICANT) V. GENERAL SOUND AND THEATRE EQUIPMENT COMPANY
(RESPONDENT). (12 EMPLOYEES).

16473-69-R: LOCAL UNION 221, UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED
STATES AND CANADA (APPLICANT) V. JOE MACCROCCHI & SONS LTD. (J & M
CONSTRUCTION) 50 CROCKFORD BLVD., SCARBOROUGH, ONTARIO (RESPONDENT).
(3 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JULY

16158-69-R: PETER GLEW AND SAMUEL MCCOY (APPLICANTS) V. THE HOTEL AND
RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 412, A.
F. OF L, C.I.C., C.L.C. (RESPONDENT) V. THE NICOLET HOUSE (SAULT STE.
MARIE) LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL REGULAR EMPLOYEES OF THE NICOLET HOUSE (SAULT STE. MARIE)
LIMITED, SAVE AND EXCEPT OFFICE STAFF AND HEADS OF DEPARTMENTS OR THOSE
PERSONS WHO ARE EMPLOYED FOR LESS THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	3	

16288-69-R: GRAY'S DEPARTMENT STORES LIMITED (APPLICANT) V. RETAIL,
WHOLESALE AND DEPARTMENT STORE UNION LOCAL 1002, AFL:CIO:CLC
(RESPONDENT). (DISMISSED).

16331-69-R: LORNE SHORT (APPLICANT) V. INTERNATIONAL BEVERAGE DISPENSERS'
AND BARTENDERS' UNION LOCAL 280 (RESPONDENT). (DISMISSED). (5 EMPLOYEES).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JULY

16256-69-R: SOFT DRINK WORKERS LOCAL UNION 390, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL, CIO-CLC (APPLICANT) V. PURE SPRING (CANADA) LIMITED (RESPONDENT) V. BREWERY WORKERS LOCAL UNION 365, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA - AFL-CIO-CLC (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JULY

16332-69-U: ROMAT ORNAMENTAL IRON LTD. (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 528).

16333-69-U: ROMAT ORNAMENTAL IRON LTD.(APPLICANT) V. MESSRS. COSMO COLARUSSO LUGI PAPPAIANNI ACHILLO PELLACHIA ALOIS HACEVAR SEVERINO DELGOBBO STANLEY STANESIC VINCENT COLARUSSO PETER JSAKALOS FRANCESCO PAPPAIANNI JOSEPH MORELLO MORRIS UNGER JOHN THISLE MARIO KNOVAK HEVERTON GEORGE LOFTERS GUS FOTIAS PEARL MUTTER SANTA ZUCCARINNI STEVEN WILSON ANTONIO LEARDI NUTARO CATALDO RENATO SIROZZATIA RAPHEAL NITTO (RESPONDENTS). DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 529).

APPLICATIONS FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

JULY

16356-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 535).

16416-69-U: LOCAL UNION #721, OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. JAMES HOWDEN AND PARSONS OF CANADA LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 537).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY

16099-69-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (APPLICANT)
V. HANES OF CANADA LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 540).

16100-69-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (APPLICANT)
V. HANES OF CANADA LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 540).

16101-69-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (APPLICANT)
V. HANES OF CANADA LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 541).

16187-69-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)
V. LESLIE SINDEN (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 542).

16188-69-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)
V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND LOCAL 1788 OF THE
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 543).

16189-69-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)
V. A. DEMOREST, C. ELDRIDGE, N. FERGUSON, L. GODFREY, W. GILROY, T.
HUNTER, M. MINES, T. MCCORMACK, R. RONAN, W. SHAW, R. WILLIAMS, S. BELL,
C. L. BICKERSTAFF, W. CARR, G. FLETCHER, K. GRANSJOEN, T. HARTJES, D.
MCNANNY, S. SMOCZYNSKY AND V. STRICKLAND (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 544).

16290-69-U: CATKEY CONSTRUCTION LIMITED (APPLICANT) V. FRANK MORAN, WAINO
HEINEN, MICHAEL OVA, EINO HYTTI, I. GIGNAC, HOSEPH DAVID, NIL DUMONT,
ARNOLD REISONS, BRUNO KRAFT, M. T. PAJALA, R. SAVOURIN, AND OMAR LEBLANC
(RESPONDENTS). (WITHDRAWN).

16300-69-U: UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY
WORKERS OF AMERICA (APPLICANT) V. CHARLES WILSON LIMITED (RESPONDENT).
(WITHDRAWN).

16334-69-U: ROMAT ORNAMENTAL IRON LTD. (APPLICANT) V. MESSRS. COSMO
COLARUSSO LUGI PAPPAIANNI ACHILLO PELLACHIA ALOIS HACEVAR SEVERINO DEGOBBO
STANLEY STANESIC VINCENT COLARUSSO PETER JSAKALOS FRANCESCO PAPPAIANNI JOSE
MORELLO MORRIS UNGER JOHN THISLE MARIO KNOVAK HEVERTON GEORGE LOFTERS GUS
FOTIAS PEARL MUTTER SANTA ZUCCARINNI STEVEN WILSON ANTONIO LEARDI NUTARO
CATALDO RENATO SIROZZATIO RAPHEAL NITTO (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 544).

16335-69-U: ROMAT ORNAMENTAL IRON LTD. (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES AND MR. PATRICK MURPHY (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 545).

16391-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ROMAT ORNAMENTAL IRON LTD. AND A. MATLOFSKY (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 546).

16442-69-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. URANIUM TRUCK LINES LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JULY

16181-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SPURRELL'S I. G. A. (RESPONDENT). (WITHDRAWN).

16195-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. MOBILE MATERIAL HANDLING EQUIPMENT LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 547).

16204-69-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. MATTHEWS GROUP LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 548).

16238-69-U: SUDBURY TYPOGRAPHICAL UNION No. 846 (IT) (COMPLAINANT) V. TEMISKAMING PRINTING COMPANY LIMITED (RESPONDENT). (GRANTED).

16251-69-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL UNIONS 633 AND 175 (COMPLAINANT) V. GREAT ATLANTIC AND PACIFIC TEA COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

16258-69-U: RICHARD McLATCHIE (COMPLAINANT) V. ROLAND & LAURETTE BOILEAU (DOMINION HOTEL) MINDEN ONT. (RESPONDENT). (DISMISSED).

16269-69-U: SUDBURY TYPOGRAPHICAL UNION No. 847 (ITU) (COMPLAINANT) V. TEMISKAMING PRINTING COMPANY LIMITED (RESPONDENT). (GRANTED).

16279-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. MEREDITH-CONNELLY MOTORS CO. LIMITED (RESPONDENT). (WITHDRAWN).

16299-69-U: UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (COMPLAINANT) V. CHARLES WILSON LIMITED (RESPONDENT). (WITHDRAWN).

16339-69-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. PLASTICAP LIMITED (RESPONDENT). (WITHDRAWN).

16340-69-U: THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL No. 12, KITCHENER, ONTARIO (COMPLAINANT) V. JOHN VERMULST CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

16368-69-U: ALEXANDER R. WALKER (COMPLAINANT) V. EAGLE PRECISION TOOL LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 551).

16430-69-U: RETAIL STORE EMPLOYEES UNION LOCAL No. 832 (COMPLAINANT) V. SILVER LAKE BEVERAGE CO. LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

16298-69-M: PARISIAN FABRIC CARE SERVICES LIMITED (COMPANY) AND, LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

16479-69-M: CANADIAN TRILMOBILE LIMITED AND, THE INTERNATIONAL UNION AND UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.-A.F.L.-C.I.O.) AND LOCAL 252 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (APPLICANTS). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING JULY

15613-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 831 (APPLICANT) V. PEEL COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE BOARD OF EDUCATION FOR THE TOWN OF MISSISSAUGA MAINTENANCE EMPLOYEES' ASSOCIATION (INTERVENER) V. PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT MAINTENANCE FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF MAINTENANCE FOREMAN AND AND SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		279
NUMBER OF PERSONS WHO CAST BALLOTS	274	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	51	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER, THE BOARD OF EDUCATION FOR THE TOWN OF MISSISSAUGA MAINTENANCE EMPLOYEES' ASSOCIATION	14	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER, PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOCIATION	207	

15660-68-M: THE MIDDLESEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1166 (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK."

(PURSUANT TO THE PROVISIONS OF SECTION 47A(5) OF THE LABOUR RELATIONS ACT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		59
NUMBER OF PERSONS WHO CAST BALLOTS	57	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	51	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	6	

REFERENCE TO BOARD PURSUANT TO SECTION 79A

16216-69-M: THE TORONTO TYPOGRAPHICAL UNION No. 91, I.T.U. (TRADE UNION) V. RAPID TYPESETTING COMPANY LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 558).

16323-69-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(TRADE UNION) V. FRANKI CANADA LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 559).

16382-69-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(TRADE UNION) V. A. D. ROSS & COMPANY LIMITED (EMPLOYER).
(DISMISSED).

JURISDICTIONAL DISPUTES

15406(A)-68-JD: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL
AND ORNAMENTAL IRON WORKERS, LOCAL 721 (COMPLAINANT) V. TORONTO
FORMING (1965) LIMITED AND WOOD, WIRE AND METAL LATHERS' INTER-
NATIONAL UNION, LOCAL 562 (RESPONDENTS). (DISMISSED).

15507(A)-68-JD: CARPENTERS' DISTRICT COUNCIL OF TORONTO AND
VICINITY (COMPLAINANT) V. WOOD, WIRE AND METAL LATHERS' INTER-
NATIONAL UNION, LOCAL 562 AND VERO FORMS LIMITED (RESPONDENTS).
(DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

15567-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE
WORKERS (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY OF CANADA
LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).
(REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 561).

15832-68-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

16112-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS (APPLICANT) V. OLIVETTI UNDERWOOD LIMITED (RESPONDENT) V.
GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 564).

16157-69-R: RUTH PULLMAN AND SHARON SCOTT (APPLICANTS) V. THE
INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE U.S.A. AND
CANADA, LOCAL 905 (RESPONDENT). (REQUEST DENIED).

16246-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 498 (APPLICANT) V. STRADWICK INDUSTRIES LIMITED (RESPONDENT).
(REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 563).

INDEXED ENDORSEMENTS - CERTIFICATION

15604-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SHERMAN
MINE, CLIFFS OF CANADA, LIMITED, MANAGER (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: D. M. STOREY, ALBERT DESBIENS AND
FRANK BOBYK FOR THE APPLICANT; F. G. HAMILTON, B. H. BOYUM AND
J. CLANCEY FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 3, 1969.

1. THE APPLICANT SEEKS A BARGAINING UNIT OF OFFICE AND TECHNICAL EMPLOYEES WHICH WOULD INCLUDE PERSONS EMPLOYED IN THE RESPONDENT'S PROCESS CONTROL LABORATORY.
2. THE RESPONDENT TOOK THE POSITION THAT SUCH EMPLOYEES ARE INAPPROPRIATE FOR INCLUSION IN THE UNIT OF OFFICE AND TECHNICAL EMPLOYEES. IT CONTENDS THAT THE COMMUNITY OF INTEREST OF THE PROCESS CONTROL LABORATORY EMPLOYEES LIES WITH THE PRODUCTION EMPLOYEES' UNIT AND NOT WITH THE OFFICE AND TECHNICAL GROUP.
3. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO, AMONG OTHER MATTERS, THE COMPOSITION OF THE BARGAINING UNIT WITH PARTICULAR REFERENCE TO PROCESS CONTROL LABORATORY EMPLOYEES.
4. ON APRIL 23RD, THE BOARD HEARD THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MARCH 21, 1969.
5. IN ALMA PAINT & VARNISH COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1968, P. 551, THE BOARD SET OUT CERTAIN CRITERIA TO BE FOLLOWED IN DEALING WITH THE QUESTION OF COMMUNITY OF INTEREST. THOSE CRITERIA ARE AS FOLLOWS:
 - (A) THE RESPONDENT'S ORGANIZATION AND ADMINISTRATION;
 - (B) INTERMINGLING AND INTERCHANGE;
 - (C) GEOGRAPHIC LOCATION OF WORK;
 - (D) KIND OF SKILLS, RESPONSIBILITIES AND INTERCHANGEABILITY;
 - (E) NATURE AND PLACE OF WORK;
 - (F) CONDITIONS OF EMPLOYMENT.
6. IN THE INSTANT CASE, THE BOARD HAS CAREFULLY REVIEWED ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND HAS MEASURED IT AGAINST THE ABOVE CRITERIA. ON THE BASIS OF THE SUBMISSIONS MADE

BY THE COUNSEL FOR THE PARTIES AND THE APPLICATION OF THE CRITERIA TO THE EVIDENCE, WE ARE PERSUADED THAT THE PROCESS CONTROL LABORATORY EMPLOYEES' COMMUNITY OF INTEREST LIES WITH THE PRODUCTION EMPLOYEES AND NOT WITH THE OFFICE AND TECHNICAL GROUP. THE LABORATORY EMPLOYEES, THEREFORE, ARE NOT EMPLOYEES OF THE RESPONDENT WHO SHOULD BE INCLUDED IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT.

7. IN LIGHT OF THE FOREGOING AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL OFFICE CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ITS SHERMAN MINE IN THE IMPROVEMENT AREA DISTRICT OF TIMAGAMI, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND SHIFT BOSSES, PERSONS ABOVE THE RANK OF FOREMAN, SUPERVISOR AND SHIFT BOSS, PERSONNEL OFFICER, PERSONNEL CLERK, SAFETY ENGINEER, HEAD PLANT METALLURGIST, CHIEF ENGINEER-GEOLOGIST, SECRETARY TO THE MINE MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED ON A COOPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY AND PERSONS EMPLOYED IN THE PROCESS CONTROL LABORATORY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT:

- (A) SUSAN MANTHORNE (PREVIOUSLY INCORRECTLY NAMED LANTHORNE) IS ADDED TO SCHEDULE A AND IS INCLUDED IN THE BARGAINING UNIT;
- (B) RALPH W. LAYNE IS A Co-OPERATIVE TRAINING STUDENT AND IS DELETED FROM SCHEDULE A.
- (C) THE PERSONNEL OFFICER, PERSONNEL CLERK AND SAFETY ENGINEER, COMPRISED ALL PERSONS IN THE PERSONNEL DEPARTMENT ON THE DATE OF THE MAKING OF THE APPLICATION.
- (D) THAT MARJORIE A. WELCH IS APPROPRIATELY INCLUDED IN THE BARGAINING UNIT.

9. THE ATTENTION OF THE PARTIES IS DRAWN TO PARAGRAPH 5 OF THE BOARD'S DECISION OF FEBRUARY 19, 1969, NOTING THE AGREEMENT OF THE PARTIES THAT ANDERSON MCLEOD, CHEMIST, IS EXCLUDED FROM THE BARGAINING UNIT. THE BOARD NOTES THAT THE NAMES BROGEAU AND DRYER APPEARING IN THE SAME PARAGRAPH (5) SHOULD READ BRAZEAU AND DWYER RESPECTIVELY.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 6, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7 (1) OF THE SAID ACT.

11. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

14. IN VIEW OF THE FACT THAT A REPRESENTATION VOTE HAS BEEN ORDERED ON THE BASIS OF THE MEMBERSHIP EVIDENCE, IT BECOMES UN-NECESSARY TO DEAL WITH THE PETITION FILED IN THIS INSTANCE.

15. SUBSTANTIAL EVIDENCE OF MEMBERSHIP RECEIPTS WAS FILED BY THE APPLICANT WITH RESPECT TO PERSONS EMPLOYED IN THE PROCESS CONTROL LABORATORY AND IT WOULD APPEAR TO THE BOARD THAT SUCH PERSONS MIGHT PROPERLY BE APPROPRIATE FOR INCLUSION IN A "TAG END" UNIT TO THE PRODUCTION UNIT. THE BOARD MAKES NO DETERMINATION ON THIS ASPECT OF THE CASE PENDING RECEIPTS FROM THE PARTIES OF SUCH SUBMISSIONS WITH RESPECT THERETO AS THEY MAY CONSIDER ADVISABLE. IN ANY EVENT, THE COMPANY IS DIRECTED TO SUPPLY TO THE BOARD THE NAMES OF ANY ADDITIONAL EMPLOYEES WHO MIGHT BE DEEMED TO BE APPROPRIATE FOR INCLUSION IN SUCH A TAG END UNIT WITHIN 5 DAYS OF THE RECEIPT HEREOF.

15782-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) v. TORTEX MACHINE WORKS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: DANIEL DEAN, W. FRASER FOR THE APPLICANT; MICHAEL MCKEOWN, W. J. POINTS FOR THE RESPONDENT; FELIX KWIECIEN FOR THE GROUP OF EMPLOYEES.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER O. HODGES:
JULY 2, 1969.

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3. IN THIS APPLICATION A STATEMENT OF DESIRE WAS FILED BY EMPLOYEES IN OPPOSITION TO THE UNION.

4. THE EVIDENCE REVEALED THAT AT OR ABOUT THE TIME NOTICE OF THE APPLICATION FOR CERTIFICATION WAS POSTED IN THE RESPONDENT'S PLANT,

P. J. POINTS, AN OFFICER OF THE RESPONDENT, CALLED A NUMBER BUT NOT ALL OF THE EMPLOYEES INTO HIS OFFICE. THE PLANT IS A SMALL ONE AND THE EMPLOYEES WERE CALLED INTO THE OFFICE BY THE INTERCOM SYSTEM. ONE OF THE EMPLOYEES CALLED WAS MR. KWIECIEN WHO APPEARED ON BEHALF OF THE EMPLOYEES AND TESTIFIED AS TO THE ORIGATION AND CIRCULATION OF THE STATEMENT OF DESIRE. THE EMPLOYEES WERE TOLD BY MR. POINTS THAT HE (MR. POINTS) DID NOT WANT A UNION AND MR. POINTS ASKED THE EMPLOYEES TO SIGN A SLIP OF PAPER SAYING THAT THE EMPLOYEES DID NOT WANT TO JOIN THE UNION AND THAT THEY WOULD "PULL OUT OF THE UNION." MR. KWIECIEN TESTIFIED THAT MR. POINTS HAD PRESENTED A SHEET OF PAPER TO HIM WITH HIS NAME ON IT AND ASKED HIM TO SIGNIFY WHETHER HE WAS FOR OR AGAINST THE UNION. SHORTLY THEREAFTER, MR. KWIECIEN WAS PARTY TO THE ORIGATION AND CIRCULATION OF THE STATEMENT OF DESIRE, WHICH FOR THE MOST PART WAS SIGNED IN THE PLANT DURING WORKING HOURS.

5. THE RESPONDENT SUBMITTED THAT THE STATEMENT OF DESIRE WAS INDEPENDENT OF MANAGEMENT AND, ACCORDINGLY, THE BOARD SHOULD ORDER A VOTE OF THE EMPLOYEES.

6. HAVING REGARD TO THE FACT THAT THIS IS A SMALL PLANT, THAT EMPLOYEES WERE CALLED INTO MR. POINTS' OFFICE BY AN INTER-COM SYSTEM, WE ARE OF THE OPINION THAT THE EMPLOYEES WOULD IN ALL PROBABILITY KNOW WHY MR. KWIECIEN WAS CALLED INTO THE OFFICE AND ACCORDINGLY WOULD HAVE BEEN AWARE OF THE WISHES OF THE EMPLOYER. WE NOTE ALSO THAT THE PETITION WAS SIGNED IN THE PLANT, THAT MOST OF THE PERSONS WHO SIGNED THE PETITION HAD PREVIOUSLY JOINED THE APPLICANT UNION, THAT MR. KWIECIEN WHO TESTIFIED FOR THE PETITIONER IN REPLY TO A QUESTION FROM THE BOARD INDICATED THAT HE DID NOT DISCUSS THE UNION WITH MANAGEMENT AND THEN, SUBSEQUENTLY, IN REPLY REVEALED HIS DISCUSSION WITH MR. POINTS.

7. SOME OF THESE FACTORS ALONE MIGHT NOT BE SUFFICIENT TO CAUSE THE BOARD TO DISREGARD THE STATEMENT OF DESIRE. HOWEVER, HAVING REGARD TO ALL THE FACTORS, WE ARE NOT SATISFIED THAT THE STATEMENT OF DESIRE REFLECTS THE TRUE WISHES OF THE EMPLOYEES AND, ACCORDINGLY, IT WILL NOT BE NECESSARY TO OBTAIN THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

8. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. FOR THE PURPOSE OF CLARITY THE BOARD FURTHER FINDS THAT MR. P. ALLISON IS NOT INCLUDED IN THE BARGAINING UNIT.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 14, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: JULY 2, 1969.

1. I DISSENT.

2. IN GENERAL, AN EMPLOYEE CANNOT REFUSE TO ATTEND AT THE MANAGER'S OFFICE WHEN REQUESTED TO DO SO. MR. KWIECIEN HAD NO ALTERNATIVE BUT TO GO TO MR. POINTS' OFFICE WHEN SO REQUESTED. CONSEQUENTLY, HE SHOULD NOT BE PENALIZED FOR SUCH ACTION NOR SHOULD THE PETITION IN OPPOSITION TO THE UNION WHICH HE CIRCULATED ON HIS OWN INITIATIVE BE INVALIDATED. THIS IS ESPECIALLY SO WHEN NO EMPLOYEES WHO SIGNED THE PETITION COMPLAINED TO THE BOARD THAT THEY HAD DONE SO UNDER DURESS OR THAT THEIR SIGNATURES THEREON DID NOT REPRESENT THEIR VOLUNTARY WISHES IN THE MATTER.

3. IN SUCH CIRCUMSTANCES, I WOULD HAVE GIVEN WEIGHT TO THE PETITION AND DIRECTED A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

15832-68-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: IAN SCOTT, HARRY HADDAWAY FOR THE APPLICANT; T. D. DELAMERE, Q.C., T. W. SARGEANT FOR THE RESPONDENT; MISS BARBARA BLANCHARD, MRS. BEATRICE MAXWELL, MRS. MARGARET HAMELIN, MRS. CECILE TAYLOR FOR THE GROUP OF EMPLOYEES.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER O. HODGES:
JULY 11, 1969.

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2. IN THIS APPLICATION A STATEMENT OF DESIRE WAS FILED BY A GROUP OF EMPLOYEES. PURSUANT TO THE REQUIREMENTS OF THIS BOARD AN INQUIRY WAS MADE INTO:

- A) THE CIRCUMSTANCES CONCERNING THE ORIGATION OF THE STATEMENT OF DESIRE
- B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED.

3. THERE WERE TWO DOCUMENTS FILED BY THE GROUP OF EMPLOYEES WHICH HAD SEPARATE HEADINGS. IT WILL ONLY BE NECESSARY TO DEAL WITH ONE OF THE DOCUMENTS FOR THE REASONS WHICH WILL APPEAR. THE PARTICULAR DOCUMENT WITH WHICH WE ARE CONCERNED CONTAINED THE FOLLOWING STATEMENT:

"WE THE UNDERSIGNED, HAVING SIGNED A UNION CARD HAVE NO DESIRE AS OF NOW TO BELONG TO SAID UNION OR HAVE ANY PART OF SAID UNION NOW MAKING AN APPLICATION TO UNIONIZE BAUSCH & LOMB OPT. CO. LTD. MIDLAND, ONT."

THE EMPLOYEE TESTIFYING AS TO THE ORIGATION OF THIS DOCUMENT INDICATED THAT WHILE SHE AND OTHERS WERE OUTSIDE THE PLANT SOMEONE WENT INSIDE THE PLANT AND RETURNED WITH THE DOCUMENT. THIS DOCUMENT WAS SUBSEQUENTLY SIGNED BY SOME OF THE EMPLOYEES. THE WITNESS WAS UNABLE TO TELL THE BOARD WHERE THIS DOCUMENT ORIGINATED AND WHO PREPARED IT, NOR COULD SHE ADVISE THE BOARD AS TO THE IDENTITY OF THE PERSON WHO BROUGHT THE DOCUMENT FROM THE PLANT.

4. THE STATEMENTS OF DESIRE FILED WITH THE BOARD MUST MEET BOTH THE TEST OF ORIGATION AND THE TEST OF CIRCULATION. IF A STATEMENT OF DESIRE MEETS ONE OF THE TESTS BUT CANNOT SATISFY THE OTHER, THEN IT IS NOT ACCEPTED BY THE BOARD AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP. SEE E.G. INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506 V. VILLAGE CONTRACTORS V. BRICKLAYERS', MASONS' INDEPENDENT UNION OF CANADA, LOCAL 1 V. GROUP OF EMPLOYEES 1966 JULY OLRB MONTHLY. REP. 231 AT 233; AND INTERNATIONAL UNION OF DISTRICT 50 UNITED MINE WORKERS OF AMERICA V. ROXALIN OF CANADA LTD. V. GROUP OF EMPLOYEES 1967 DEC. OLRB MTHLY. REP. 867.

5. IN THE "ORIGATION CASES" THE BOARD DEMANDS SOME EVIDENCE OF ORIGATION I.E. THE CIRCUMSTANCES SURROUNDING THE ACTUAL PREPARATION OF THE DOCUMENT, AND FAILURE TO ADDUCE EVIDENCE IN THAT REGARD WILL BE FATAL TO THE STATEMENT OF DESIRE. SEE VILLAGE CONTRACTORS CASE, SUPRA, AT P. 233.

6. HAVING REGARD TO THESE CONSIDERATIONS WE FIND THAT THE DOCUMENT FILED DOES NOT SATISFY THE REQUIREMENTS OF THIS BOARD. IT IS THEREFORE NOT NECESSARY TO DISCUSS THE OTHER DOCUMENT FILED, BECAUSE STANDING BY ITSELF IT DOES NOT MATERIALLY AFFECT THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. IT WILL THEREFORE NOT BE NECESSARY TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

7. WE FURTHER FIND THAT ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. IN THIS CASE A QUESTION AROSE AS TO WHETHER OR NOT CERTAIN PERSONS WHO WERE CLASSIFIED AS "GROUP LEADERS" EXERCISED MANAGERIAL FUNCTIONS AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. ACCORDINGLY AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF GROUP LEADERS AND A SUBSEQUENT HEARING WAS HELD WHERE FULL ARGUMENT WAS PRESENTED BY BOTH PARTIES. BOTH PARTIES RELIED UPON UNITED STEELWORKERS OF AMERICA V. FALCONBRIDGE NICKEL MINES LTD. 1966 SEPT. OLRB MTHLY. REP. 379 AS SUPPORTING THEIR RESPECTIVE POSITIONS.

9. HAVING REGARD TO THE EXAMINER'S REPORT AND THE CRITERION IN THE FALCONBRIDGE NICKEL MINES CASE, SUPRA IT APPEARS THAT MANY OF THESE PERSONS HAVE DUTIES WHICH ARE BORDER-LINE BETWEEN MANAGERIAL AND EMPLOYEE. THE PARTIES AGREED THAT EACH GROUP LEADER SHOULD BE ASSESSED ON AN INDIVIDUAL BASIS NOTWITHSTANDING THAT THEY ARE ALL CLASSIFIED AS GROUP LEADERS. WE ARE IN AGREEMENT WITH THAT SUBMISSION AND ACCORDINGLY, WE HAVE ATTEMPTED TO ASSESS THE TOTAL FUNCTION OF EACH INDIVIDUAL. HAVING REGARD, THEREFORE, TO THE EXAMINER'S REPORT, THE REPRESENTATIONS OF THE PARTIES, AND THE PRINCIPLES CONTAINED IN THE FALCONBRIDGE NICKEL MINES CASE, SUPRA, WE FIND THAT THE FOLLOWING PERSONS EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT:

R. F. COPELAND AND R. N. ROBITAILLE.

10. WE FURTHER FIND THAT THE FOLLOWING DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT:

WILLARD HAMELIN, WILFRED HAMELIN,
LLOYD RICHARD SCOTT, ROSS DONALD IRVINE,
HARVEY EDWARD JACKSON, JOHN WILLIAM FORD,
ALLAN JAMES SCOTT, NEIL ROBERT GONEAU
AND HENRY DUPUIS.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 19TH 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE.

DECISION OF BOARD MEMBER H. F. IRWIN: JULY 11, 1969.

1. I DISSENT FROM THE DECISION OF THE BOARD IN RESPECT OF EXCLUDING FROM THE BARGAINING UNIT CERTAIN EMPLOYEES CLASSIFIED AS GROUP LEADERS. THE MAJORITY DECISION FINDS THAT THESE EMPLOYEES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

2. IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L. R.B. MONTHLY REPORT, SEPTEMBER, 1966 AT PAGE 388, PARAGRAPH 30, THE BOARD STATED:

"WHILE THE CASES CITED ABOVE WOULD SEEM TO INDICATE THAT WHILE A PERSON MAY HAVE MINOR SUPERVISORY FUNCTIONS OR VERY LIMITED CONFIDENTIAL FUNCTIONS IN MATTERS RELATING TO LABOUR RELATIONS, IF SUCH FUNCTIONS ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTION AND ARE OF SUCH A NATURE THAT THEY CANNOT BE SAID TO MATERIALLY EFFECT THE EMPLOYMENT RELATIONSHIP OF THE RESPONDENT'S EMPLOYEES, SUCH PERSONS SHOULD NOT BE EXCLUDED FROM COLLECTIVE BARGAINING BY REASON OF SECTION 1(3)(B) OF THE ACT. UNLESS A PERSON WHO REGULARLY PERFORMS WORK SIMILAR TO PERSONS IN A BARGAINING UNIT HAS INDEPENDENT DISCRETIONARY POWERS RATHER THAN MERELY INCIDENTAL REPORTING FUNCTIONS WHICH ARE SUBJECT TO THE DISCRETION AND AUTHORITY OF HIGHER PERSONS IN MANAGEMENT, THERE IS NO REASON TO EXCLUDE SUCH A PERSON FROM COLLECTIVE BARGAINING."

3. THE GROUP LEADERS HAVE ALWAYS BEEN CLASSIFIED AND RANKED BELOW THE RANK OF FOREMAN. CONSEQUENTLY, THEY WERE INCLUDED IN THE DESCRIPTION OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT UNION. IN FACT, THE APPLICANT SOLICITED MEMBERSHIP AMONGST THESE PERSONS. IT WAS ONLY WHEN THE PETITIONS IN OPPOSITION TO THE APPLICATION APPEARED THAT THE UNION CLAIMED THAT CERTAIN GROUP LEADERS PERFORMED MANAGEMENT FUNCTIONS.

4. FOR THESE REASONS AND ON THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT CONCERNING THEIR DUTIES AND RESPONSIBILITIES I WOULD HAVE INCLUDED ALL GROUP LEADERS IN THE BARGAINING UNIT.

16012-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: L. V. PATHE, D. J. MORRISSEY FOR THE APPLICANT; MICHAEL GORDON, FRANK BRIDGE FOR THE RESPONDENT; AND NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFE: JULY 21, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS APPLIED TO BE CERTIFIED AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN WINDSOR EXCEPT THE MEAT DEPARTMENT EMPLOYEES AND CERTAIN OTHERS. THE RESPONDENT SEEKS TO EXCLUDE FROM THE BARGAINING UNIT THOSE EMPLOYEES CLASSIFIED BY IT AS HEAD CASHIER AND PRODUCE DEPARTMENT HEADS. AN EXAMINER WAS APPOINTED BY THE BOARD TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF SUCH PERSONS AND A HEARING OF THE BOARD WAS HELD ON JULY 7TH, 1969 TO CONSIDER THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT OF THE EXAMINER DATED JUNE 9TH 1969.

2. THE PARTIES AGREED THAT THE EVIDENCE OF MR. DON ADAMS, PRODUCE MANAGER, AND MRS. VIVIAN PITRE, HEAD CASHIER, WOULD BE APPLICABLE TO ALL OF ITS EMPLOYEES IN WINDSOR IN THE SAME CLASSIFICATIONS. THE PARTIES FURTHER AGREED THAT, ALL EMPLOYEES EXCEPT THE STORE MANAGER ARE SALARIED, PAID IN CASH FROM THE STORE WEEKLY; ALL EMPLOYEES EXCEPT THE STORE MANAGER ARE REQUIRED TO PUNCH A TIME CLOCK; ALL EMPLOYEES RECEIVE THE SAME EMPLOYMENT BENEFITS; ALL EMPLOYEES WORK A FIVE DAY FORTY HOUR WEEK AND PART TIME EMPLOYEES ARE LIMITED TO TWENTY THREE HOURS PER WEEK; DEPARTMENT HEADS DO NOT COMPUTE TIME CARDS.

3. THE PRODUCE MANAGER REPORTS TO THE STORE MANAGER AND ALSO TAKES INSTRUCTIONS FROM AREA SUPERVISORS. HE SUPERVISES A PART TIME EMPLOYEE WHO WORKS ON FRIDAY EVENINGS AND SATURDAYS.

HE CORRECTS EMPLOYEES IN THEIR WORK BUT WOULD GO TO THE MANAGER IF THE EMPLOYEE DID NOT IMPROVE. HE DOES NOT HAVE THE AUTHORITY TO HIRE OR FIRE, BUT THINKS HE COULD RECOMMEND SUCH ACTIONS, HOWEVER HE HAS NOT DONE SO. HE HAS NEVER RECOMMENDED WAGE INCREASES AND WAS NEVER TOLD HE HAD SUCH AUTHORITY. HE DID NOT KNOW WHY PART TIME EMPLOYEES HAD RECEIVED AN INCREASE IN WAGES. HE IS RESPONSIBLE FOR THE PRODUCE COUNTER AND ORDERS MERCHANDISE DIRECTLY FROM TORONTO. HE ASSISTS IN THE UNLOADING OF PRODUCE AND IS SOMETIMES REQUIRED TO PARCEL CERTAIN PRODUCE. HE DOES PURCHASE SOME ITEMS LOCALLY FROM THE SUPPLIERS DIRECTED BY HEAD OFFICE AND CAN SET PRICES TO MAKE A PROFIT WHICH HE DOES WITHOUT NECESSARILY CONSULTING WITH THE STORE MANAGER. HE DOES TAKE INSTRUCTION FROM THE ASSISTANT STORE MANAGER IN THE ABSENCE OF THE STORE MANAGER. AN EMPLOYEE IN THIS DEPARTMENT ON MR. ADAMS' DAY OFF WOULD BE INSTRUCTED BY THE STORE MANAGER. HE DOES ALL THE WORK RELATING TO THE DEPARTMENT INCLUDING TRIMMING OF VEGETABLES. HE KNOWS THAT HE IS RESPONSIBLE FOR THE GROSS PROFIT OF THE DEPARTMENT. HE IS NOTIFIED OF COMPANY POLICIES BY LETTERS OR NOTICES ON THE BULLETIN BOARD AND HAS NOT ATTENDED MEETINGS WITH MEMBERS OF MANAGEMENT.

4. HAVING REGARD TO THE FOREGOING AND THE REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT THE PRODUCE MANAGER DOES NOT EXERCISE SUFFICIENT INDEPENDENT DISCRETION IN THE COURSE OF HIS DUTIES TO SUPPORT A FINDING THAT HE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. WE THEREFORE FIND THAT THE EMPLOYEES CLASSIFIED BY THE RESPONDENT AS PRODUCE MANAGERS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE HEAD CASHIER REPORTS TO THE STORE MANAGER AND IN HIS ABSENCE THE ASSISTANT STORE MANAGER AND AS WELL THE AREA SUPERVISOR. MRS. PITRE SUPERVISES THE ASSISTANT HEAD CASHIER, ONE OTHER FULL TIME GIRL AND TWENTY PART TIME CASHIERS AND IS RESPONSIBLE FOR THEIR WORK SCHEDULES. SHE DOES NOT HIRE THE CASHIERS, HOWEVER SHE DOES CHECK THEIR APPLICATION FOR EMPLOYMENT FORMS BUT CAN AND HAS RECOMMENDED THE HIRING OF EMPLOYEES. SHE DOES NOT HAVE THE AUTHORITY TO DISMISS OR SUSPEND AN EMPLOYEE BUT WOULD REPORT A DISHONEST EMPLOYEE TO THE MANAGER. SHE CAN RECOMMEND WAGE INCREASES BUT DOES NOT GRANT INCREASES ON HER OWN. IN HER DUTIES SHE IS RESPONSIBLE FOR THE CASHIERS, ENFORCES THE STORE RULES AND REPRIMANDS EMPLOYEES IF NECESSARY. HALF OF HER TIME IS SPENT IN SUPERVISING CASHIERS AND THE OTHER HALF IN THE OFFICE DEALING GENERALLY WITH VARIOUS BOOKKEEPING PROCEDURES. SHE PREPARES THE WEEKLY PAYROLL, COMPUTING THE SALARIES FROM THE EMPLOYEES' TIME CARDS. SHE HAS, ALONG WITH THE MANAGER AND ASSISTANT MANAGER, THE COMBINATION FOR THE STORE SAFE AND ONLY THESE THREE PERSONS AND HER ASSISTANT ARE ALLOWED INTO THE OFFICE. PERSONNEL CARDS ARE KEPT IN THE OFFICE AND ONLY THE AFOREMENTIONED PERSONS ARE PERMITTED TO USE THEM. SHE SAID SHE DOES SEE THINGS THAT SHE CONSIDERED TO BE CONFIDENTIAL.

6. ON ALL THE EVIDENCE AND HAVING PARTICULAR REGARD TO THE VERY DEFINITE SUPERVISORY FUNCTIONS EXERCISED BY THE HEAD CASHIER, WE FIND THAT THE HEAD CASHIERS DO EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. IN ARRIVING AT THE ABOVE CONCLUSIONS WE HAVE HAD REFERENCE TO THE FALCONBRIDGE NICKEL MINE LIMITED CASE, O.L.R.B. MONTHLY REPORT SEPTEMBER 1966, PAGE 379. WE THEREFORE FIND THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD CASHIERS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

8. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WINDSOR SAVE AND EXCEPT ASSISTANT STORE MANAGERS, HEAD CASHIERS, PERSONS ABOVE THE RANK OF HEAD CASHIER AND ASSISTANT STORE MANAGER, MEAT DEPARTMENT EMPLOYEES, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 23RD, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: JULY 21, 1969.

I DISSENT. HAVING REGARD TO THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES, I WOULD HAVE FOUND THAT THE PRODUCE DEPARTMENT HEAD EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

IN EXCLUDING THE PRODUCE DEPARTMENT HEAD FROM THE BARGAINING UNIT, I AM COGNISANT HOWEVER THAT RAY DON ADAMS, THE PRODUCE DEPARTMENT HEAD EXAMINED, BECAUSE OF THE RELATIVELY SHORT TIME THAT HE HAS BEEN ENGAGED BY THE COMPANY IN THIS CAPACITY, DID NOT EXERCISE SOME OF THE DUTIES WHICH WOULD NORMALLY BE ASSOCIATED WITH THIS POSITION, AS INDICATED BY THE EXAMINER'S REPORT.

16013-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L. V. PATHE, D. J. MORRISSEY FOR
THE APPLICANT; MICHAEL GORDON, FRANK BRIDGE FOR THE RESPONDENT;
AND NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: JULY 21, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS APPLIED TO BECOME THE BARGAINING AGENT FOR ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT IN ITS STORES AT WINDSOR WITH CERTAIN EXCEPTIONS. THE RESPONDENT SOUGHT TO EXCLUDE FROM THE BARGAINING UNIT THOSE PERSONS CLASSIFIED BY IT AS MEAT DEPARTMENT HEADS. AN EXAMINER WAS APPOINTED BY THE BOARD TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF SUCH PERSONS AND A HEARING WAS HELD BY THE BOARD ON JULY 7TH 1969 TO CONSIDER THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT OF THE EXAMINER DATED JUNE 9TH 1969.

2. IT WAS AGREED BY THE PARTIES THAT THE EVIDENCE OF MR. HANLEY, MEAT DEPARTMENT HEAD, WOULD BE APPLICABLE TO ALL EMPLOYEES IN THAT CLASSIFICATION. BRIEFLY THE EVIDENCE ESTABLISHES THAT MR. HANLEY SUPERVISES SIX EMPLOYEES, THREE FULL TIME AND THREE PART TIME AND FOR WHOM HE IS RESPONSIBLE FOR THEIR WORK SCHEDULES. MR. HANLEY'S DIRECT SUPERVISOR IS THE STORE MANAGER BUT HE ALSO REPORTS TO AN AREA MEAT SPECIALTY MAN AND AN AREA STORE SUPERVISOR. HE DOES NOT TAKE DIRECTION FROM THE ASSISTANT STORE MANAGER. HE DOES HAVE THE AUTHORITY TO HIRE PERSONNEL. ALTHOUGH WITH RESPECT TO FULL TIME PERSONS HE WOULD NOTIFY THE MEAT SPECIALTY MAN, AND MUST PROCESS APPLICATIONS THROUGH HEAD OFFICE IN TORONTO. HE DID HAVE ONE OCCASION TO HIRE A BUTCHER FROM THE UNEMPLOYMENT INSURANCE COMMISSION WHICH PERSON WAS INTERVIEWED BY HIM AND RECOMMENDED TO THE MANAGER THAT HE BE HIRED. HE DOES ADMINISTER TESTS TO JOB APPLICANTS BEFORE BEING HIRED, AND WHEN AN EMPLOYEE IS HIRED HE WORKS WITH AN EXPERIENCED CUTTER WHO REPORTS TO MR. HANLEY ON HIS PROGRESS. MR. HANLEY CORRECTS EMPLOYEES BUT DOES NOT KNOW IF HE COULD SUSPEND THEM WITHOUT VERIFICATION. HE HAS NOT BEEN TOLD HE COULD DISMISS AN EMPLOYEE BUT HE HAS RECOMMENDED DISMISSAL OF AN EMPLOYEE. HE CAN RECOMMEND WAGE INCREASES TO THE STORE MANAGER OR MEAT SPECIALTY MAN. HE IS SOLELY RESPONSIBLE FOR ORDERING MEAT AND DOES SO ON HIS OWN;

HE IS ALSO RESPONSIBLE FOR THE MEAT COUNTER TO SEE THAT IT IS FULL AND THAT THE MERCHANDISE IS PROPERLY AVAILABLE; HE IS EXPECTED TO PRODUCE SALES AND ALTHOUGH HE DOES NOT OPERATE ON A SPECIFIC BUDGET HE IS TOLD TO WORK ON CERTAIN SUPPLY RATES AND TO KEEP WITHIN CERTAIN MAN HOUR LIMITS. HE CUTS MEAT FOR A PORTION OF HIS TIME, DOES SOME WRAPPING AND PLACES MEAT ON THE COUNTERS. AS WELL HE ASSISTS IF NECESSARY, IN THE UNLOADING OF THE TRUCK WHEN IT ARRIVES FROM THE PACKER. THERE IS NO TIME WHEN HE IS NOT ENGAGED IN MANUAL WORK AND WORKS ALONG WITH THE OTHER EMPLOYEES IN THE MEAT DEPARTMENT BUT INSTRUCTS WHILE WORKING. HE HAS ATTENDED MANAGEMENT MEETINGS WITH RESPECT TO SALES PROMOTIONS AND SCHEDULING OF VACATIONS FOR HIS DEPARTMENT.

3. THE PARTIES AGREED THAT ALL EMPLOYEES ARE SALARIED, PAID IN CASH FROM THE STORE WEEKLY, EXCEPT FOR THE STORE MANAGER; ALL EMPLOYEES EXCEPT STORE MANAGER ARE REQUIRED TO PUNCH A TIME CLOCK; ALL EMPLOYEES RECEIVE THE SAME BENEFITS; ALL EMPLOYEES WORK A FIVE DAY, FORTY HOUR WEEK AND PART TIME EMPLOYEES A TWENTY-THREE HOUR WEEK; DEPARTMENT HEADS DO NOT COMPUTE TIME CARDS.

4. IN OUR OPINION THE EVIDENCE RELATING TO THIS CLASSIFICATION CLEARLY DEMONSTRATES THAT THE MEAT DEPARTMENT HEAD EXERCISES INDEPENDENT DISCRETION IN THE OPERATION OF THE MEAT COUNTER PARTICULARLY IN DEALING WITH THE PURCHASING AND THE SUPERVISING OF THE MEAT DEPARTMENT PERSONNEL INCLUDING THE RESPONSIBILITY OF HIRING PERSONNEL ON HIS OWN. ALTHOUGH HE DOES MANUAL WORK WHICH IS AS WELL PERFORMED BY OTHERS IN THE BARGAINING UNIT, WHEN ALL THE CIRCUMSTANCES ARE VIEWED IN LIGHT OF THIS PARTICULAR TYPE OF INDUSTRY AND THE LINE OF SUPERVISION SET OUT IN THE RESPONDENT'S ORGANIZATIONAL CHART, THIS FACTOR CANNOT BY ITSELF DEROGATE FROM THE OTHER FUNCTIONS OF A SUPERVISORY NATURE. SIMILARLY, WHILE OTHER MANAGERIAL FUNCTIONS ARE EXERCISED BY OTHER SUPERVISORY PERSONNEL TO WHOM HE REPORTS, THIS DOES NOT TAKE AWAY THOSE SUPERVISORY DUTIES THAT HE DOES IN FACT, EXERCISE.

5. WE HAVE CAREFULLY CONSIDERED ALL OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES INCLUDING THE NEWMARKET I.G.A. CASE, BOARD FILE #5278-68-R AND HAVE HAD REFERENCE TO THE PRINCIPLES ENUNCIATED IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT SEPTEMBER 1966, PAGE 379 AND ALSO TO THE RICHARDSON, BOND & WRIGHT LTD. CASE, O.L.R.B. MONTHLY REPORT MARCH 1965, PAGE 638. HAVING REGARD TO THE FOREGOING, WE FIND THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS MEAT DEPARTMENT HEADS DO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WINDSOR, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIODS CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 23RD 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER P. J. O'KEEFFE: JULY 21, 1969.

IN ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I FIND THAT THE MEAT DEPARTMENT HEADS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT AND SHOULD BE INCLUDED IN THE BARGAINING UNIT.

16028-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: L. V. PATHE FOR THE APPLICANT; MICHAEL GORDON AND FRANK BRIDGE FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H.F. IRWIN: JULY 30, 1969.

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2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FURTHER FINDS THAT THOMAS ALEXANDER PATERSON, CLASSIFIED AS PRODUCE MANAGER, DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT.

3. ON THE FOREGOING BASIS, THE BOARD FURTHER FINDS THAT MARTHA VICTORIA VICKERS, CLASSIFIED AS HEAD CASHIER, EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS EXCLUDED FROM THE BARGAINING UNIT.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNDAS, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, HEAD CASHIERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER AND HEAD CASHIER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 25, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P.J. O'KEEFE: JULY 30, 1969.

ON THE BASIS OF ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES, I FIND THAT THE HEAD CASHIER DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND SHOULD THEREFORE BE INCLUDED IN THE BARGAINING UNIT.

16068-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
THE NORTH BAY BOARD OF EDUCATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: JULY 31, 1969.

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2. THE APPLICANT HEREIN SEEKS CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN (24) HOURS PER WEEK.

3. THE RESPONDENT PROPOSES THAT THE BARGAINING UNIT COM- PRISE ALL CARETAKING AND MAINTENANCE STAFF OF THE NORTH BAY BOARD OF EDUCATION ENGAGED IN CARETAKING AND MAINTENANCE, SAVE AND EX- CEPT SUPERVISORS AND HEAD CARETAKERS AND THOSE ABOVE THE RANK OF SUPERVISORS AND HEAD CARETAKERS, OFFICE STAFF, PERSONS NOT REGU- LARLY EMPLOYED FOR MORE THAN 24 HOURS PER WEEK AND STUDENTS EM- PLOYED DURING THE SCHOOL VACATION PERIOD.

4. THE RESPONDENT VOICED STRONG OBJECTIONS TO THE INCLU- SION OF THE WORD 'SERVICES' AND ASKED THAT IT BE DELETED FROM THE DESCRIPTION. IN ADDITION, IT ASKED THAT THE DESCRIPTION EXCLUDE EMPLOYEES COVERED BY THE CERTIFICATE OF THE BOARD DATED THE 23RD DAY OF AUGUST, 1968 ISSUED TO THE APPLICANT HEREIN WITH RESPECT EMPLOYEES OF THE NORTH BAY COLLEGIATE INSTITUTE BOARD.

5. WITH RESPECT TO THE FIRST OBJECTION, WE WOULD REFER THE RESPONDENT TO THE BOARD'S DECISION IN THE HALTON COUNTY BOARD OF EDUCATION, DATED MAY 20, 1969 (BOARD FILE No. 16003-69-R), WHICH DEALS WITH A SOMEWHAT SIMILAR SITUATION. THE RELEVANT PORTION OF THAT DECISION WHICH WE ADOPT HEREIN IS AS FOLLOWS:

"AT THE HEARING IN THIS MATTER, THE RESPONDENT TOOK THE POSITION THAT IT WAS NOT APPROPRIATE TO INCLUDE BUS DRIVERS AND CARETERIA HELP IN A BARGAINING UNIT WITH CARETAKERS. IN THE BOARD OF EDUCATION FOR THE CITY OF OWEN SOUND CASE, O.L.R.B. MONTHLY REPORT, JULY 1968, P. 335, THE BOARD, AFTER HAVING FIRST GIVEN FULL CONSIDER- ATION TO THE PROBLEM OF DESCRIBING BARGAINING UNITS FOR BOARDS OF EDUCATION AND HAVING NOTED THAT UP UNTIL THAT TIME THERE HAD BEEN NO CONSISTENT PRACTICE OF DESCRIBING SUCH BARGAINING UNITS, ADOPTED FOR THE FIRST TIME A DES- CRPTION OF BARGAINING UNITS FOR BOARDS OF EDUCATION WHICH READS "ALL EMPLOYEES ENGAGED IN MAINTENANCE,

SERVICES AND PLANT OPERATIONS" WITH CERTAIN EXCEPTIONS. IT WAS INTENDED THAT THIS UNIT INCLUDE SUCH PEOPLE AS JANITORS, CARETAKERS, CUSTODIAL PERSONNEL, BUS DRIVERS AND CAFETERIA HELP. BY THE USE OF THE TERMINOLOGY IN THE DESCRIPTION, THE BOARD INTENDED TO EXCLUDE FROM THE BARGAINING UNIT SUCH PERSONS AS PROFESSIONAL TEACHING STAFF, AUDIO-VISUAL TECHNICIANS, TEACHERS' ASSISTANTS AND OTHER SEMI-PROFESSIONAL PERSONNEL WHO ARE ENGAGED IN INSTRUCTING OR ACTIVELY ENGAGED IN AND CONNECTED WITH THE EDUCATION OF STUDENTS. IT HAS BEEN THE BOARD'S USUAL PRACTICE SINCE THAT TIME TO DESCRIBE THE BARGAINING UNIT FOR SCHOOL BOARDS IN THE MANNER SET OUT ABOVE. THERE IS NOTHING BEFORE THE BOARD IN THE INSTANT CASE TO CAUSE THE BOARD TO DEPART FROM ITS USUAL PRACTICE WHICH WAS FIRST ADOPTED IN JULY 1968."

6. WE NOW PROPOSE TO CONSIDER THE SECOND OBJECTION. PURSUANT TO THE TERMS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT, 1968, HEREINAFTER REFERRED TO AS "THE EDUCATION ACT", THE RESPONDENT CAME INTO EXISTENCE ON JANUARY 1ST, 1969 AND THE NORTH BAY COLLEGIATE INSTITUTE BOARD WAS DISSOLVED.

7. SECTION 84(2)(c) OF THE EDUCATION ACT READS AS FOLLOWS:

"84(2) UPON THE ORGANIZATION OF A DIVISIONAL BOARD OF A SCHOOL DIVISION OF A DEFINED CITY AND IN RESPECT OF DIVISIONAL BOARDS OF ALL OTHER SCHOOL DIVISIONS ON THE 1ST DAY OF JANUARY, 1969.

(c) ALL DEBTS, CONTRACTS, AGREEMENTS AND LIABILITIES FOR WHICH SUCH BOARDS WERE LIABLE, EXCEPT EMPLOYMENT CONTRACTS WITH TEACHERS, BECOME OBLIGATIONS OF THE DIVISIONAL BOARD OR BOARDS AS PROVIDED BY THE ARBITRATORS UNDER SUBSECTIONS 3 AND 4."

8. IT WAS THE CONTENTION OF THE RESPONDENT, AS WE UNDERSTAND IT, THAT ONE OF THE "OBLIGATIONS" IMPOSED UPON THE NEW BOARD WAS TO CONTINUE TO BARGAIN WITH THE APPLICANT WITH RESPECT TO THE PARTICULAR GROUP OF EMPLOYEES COVERED BY THE CERTIFICATE. THE RESPONDENT STATED THAT IT WAS FORCED BY THE ACT TO CONTINUE TO NEGOTIATE WITH THIS GROUP. IT CONTENDED THAT IT RECOGNIZED THE APPLICANT AS BARGAINING AGENT FOR WHAT MAY BE CALLED "THE CERTIFIED GROUP" UNDER SECTION 47A OF THE LABOUR RELATIONS ACT BECAUSE IT HAD NOT OTHER CHOICE.

9. THE DUTY TO BARGAIN WITH THE APPLICANT, WHICH THE RESPONDENT RECOGNIZES AS A CONTINUING OBLIGATION WITH RESPECT TO THE CERTIFIED EMPLOYEES BY REASON OF THE EDUCATION ACT AND SECTION 47A OF THE LABOUR RELATIONS ACT IS AN OBLIGATION HAVING ITS ORIGIN AND ROOTS IN AND BY VIRTUE OF THE LABOUR RELATIONS ACT. IT IS AN

OBLIGATION WHICH MUST, THEREFORE, CONTINUE TO BE GOVERNED THROUGH-
OUT BY THE LABOUR RELATIONS ACT IN ALL CIRCUMSTANCES AND DEVELOP-
MENTS DEALT WITH UNDER THE PROVISIONS OF THAT ACT, AFFECTING BAR-
GAINING RIGHTS AND OBLIGATIONS, UNLESS LEGISLATION TO THE CONTRARY
IS ENACTED. THE LABOUR RELATIONS ACT PARTICULARLY IN SECTION 47A
(10) EMBODIES AN ANTICIPATORY APPROACH WHICH CONTEMPLATES A CHANGE
IN RELATIONSHIP AND WHICH IS ANTAGONISTIC, IN THE BETTER SENSE OF
THE WORD, TO ANY INSTINCT TO PRESERVE THE STATUS QUO DESPITE
CHANGING CIRCUMSTANCES.

10. SECTION 47A(10) OF THE LABOUR RELATIONS ACT PROVIDES:

"WHERE ONE OR MORE MUNICIPALITIES AS DEFINED IN THE
DEPARTMENT OF MUNICIPAL AFFAIRS ACT IS ERRECTED INTO
ANOTHER MUNICIPALITY, OR TWO OR MORE SUCH MUNICIPAL-
ITIES ARE AMALGAMATED, UNITED OR OTHERWISE JOINED
TOGETHER, OR ALL OR PART OF ONE SUCH MUNICIPALITY
IS ANNEXED, ATTACHED OR ADDED TO ANOTHER SUCH
MUNICIPALITY, THE EMPLOYEES OF THE MUNICIPALITIES
CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED, AND,

- (A) THE BOARD MAY EXERCISE THE LIKE POWERS AS IT
MAY EXERCISE UNDER SUBSECTION 5 AND 7 WITH
RESPECT TO THE SALE OF A BUSINESS UNDER THIS
SECTION;
- (B) THE NEW OR ENLARGED MUNICIPALITY HAS THE LIKE
RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A
BUSINESS IS SOLD UNDER THIS SECTION AND WHO
INTERMINGLES THE EMPLOYEES OF ONE OF HIS
BUSINESSES WITH THOSE OF ANOTHER OF HIS
BUSINESSES; AND
- (C) ANY TRADE UNION CONCERNED HAS THE LIKE
RIGHTS AND OBLIGATIONS AS IT WOULD HAVE
IN THE CASE OF THE INTERMINGLING OF
EMPLOYEES IN TWO OR MORE BUSINESSES
UNDER THIS SECTION. 1966, c. 76, s. 18
(2)."

THE FACTS IN THIS CASE FALL SQUARELY WITHIN THE SITUATION DEALT
WITH IN THE ABOVE CITED SUBSECTION. IT FOLLOWS, IN OUR OPINION,
THAT THE BOARD IS ENTITLED TO EXERCISE THE POWERS BESTOWED UPON
IT IN THIS SUBSECTION IN THE PRESENT APPLICATION, NOTWITHSTAND-
ING THAT THE APPLICATION IS ONE FOR CERTIFICATION AND NOT ONE
BROUGHT DIRECTLY UNDER SUBSECTION 47A OF THE ACT. WE ARE OF
THE BELIEF THAT THE EXISTENCE, IN ANY PROCEEDINGS BEFORE THE
BOARD, OF THE STATE OF FACTS SET OUT IN SECTION 47A(10) IS QUITE

SUFFICIENT TO ENABLE THE BOARD TO EXERCISE THE POWERS OUTLINED THEREIN AND THAT NEITHER THE EXISTENCE NOR THE EXERCISE OF THOSE POWERS REQUIRES THE IMPETUS OF AN APPLICATION MADE WITH SPECIFIC REFERENCE TO SECTION 47A. (SEE GENAIRE LIMITED V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND ONTARIO LABOUR RELATIONS BOARD (1958) 14 D.L.R (2D) 201 AND REGINA V. LRB(ONT) EX PARTE BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 268 69 CLLC ¶14,181.

11. UNDER THE PROVISIONS OF SUBSECTION 5 OF SECTION 47A, THE BOARD MAY:

- (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;
- (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.

12. IN THE CIRCUMSTANCES OF THIS CASE AND HAVING REGARD TO THE FACT THAT THE EMPLOYEES OF THE RESPONDENT ARE DEEMED TO BE INTERMINGLED [SECTION 47A(10)], THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 47A(5)(A) DETERMINES THAT ALL THE EMPLOYEES OF THE RESPONDENT CONCERNED CONSTITUTE ONE APPROPRIATE BARGAINING UNIT WHICH HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DETERMINES TO COMPRISE ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT MAINTENANCE SUPERVISORS AND HEAD CARETAKERS, PERSONS ABOVE THE RANK OF SUPERVISOR AND HEAD CARETAKER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

13. ACCORDINGLY, PURSUANT TO SUBSECTION (7) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

16108-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT)
V. ZACHARY DE VUONO LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL
UNION OF NORTH AMERICA LOCAL 506 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND J. MEIORIN FOR THE
APPLICANT, F. R. VON VEH AND Z. DE VUONO FOR THE RESPONDENT,
R. KOSKIE AND T. NEIL FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 28, 1969.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAIN-
ING AGENT FOR "ALL BRICKLAYERS ASSISTANTS" IN THE EMPLOY OF THE
RESPONDENT IN BOARD GEOGRAPHIC CONSTRUCTION AREA No. 8.
2. AN ENTITY WITH THE SAME NAME AS THE APPLICANT WHICH WAS,
IN FACT, THE PREDECESSOR OF THE PRESENT APPLICANT APPLIED FOR
CERTIFICATION ON MARCH 14TH, 1969 FOR THE SAME UNIT OF EMPLOYEES
OF THE RESPONDENT THAT THE APPLICANT IS APPLYING FOR IN THE INSTANT
CASE (BOARD FILE No. 15856-68-R). THE INTERVENER HOLDS THE BARGAIN-
ING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT FOR WHICH THE APPLI-
CANT IS SEEKING CERTIFICATION BY VIRTUE OF A COLLECTIVE AGREEMENT
EFFECTIVE FROM SEPTEMBER 26TH, 1967 TO APRIL 30TH, 1969. SINCE
THIS APPLICATION WAS MADE ON APRIL 29TH, 1969, WITHIN TWO MONTHS OF
THE EXPIRY DATE OF THE SAID AGREEMENT, THE APPLICATION IS TIMELY.
3. THE INTERVENER IN THE INSTANT APPLICATION ALSO INTERVENED
IN THE EARLIER APPLICATION AND CHALLENGED THE STATUS OF THE PRE-
DECESSOR AS A TRADE UNION. HAVING CONSIDERED ALL OF THE EVIDENCE
RELATING TO THE FORMATION OF THE PREDECESSOR, THE BOARD IN ITS
DECISION IN THE EARLIER APPLICATION DATED APRIL 18TH, 1969 FOUND
THAT IT WAS NOT ENTITLED TO THE STATUS OF A TRADE UNION WITHIN THE
MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT AND DISMISSED
THE APPLICATION. WE WOULD ADD THAT THE MAIN DEFECT WHICH THE BOARD
FOUND IN THE FORMATION OF THE APPLICANT'S PREDECESSOR WAS THE
FAILURE OF THE PERSONS ATTENDING THE ORGANIZATIONAL MEETING IN
DECEMBER OF 1968 TO BECOME MEMBERS OF THAT ENTITY.
4. SINCE THE PRESENT APPLICANT HAD NOT PROVED ITS STATUS IT
WAS ADVISED BY THE REGISTRAR THAT IT WOULD BE REQUIRED TO FILE
PROOF THAT IT WAS A TRADE UNION WITHIN THE MEANING OF THE ACT.
EVIDENCE WAS GIVEN BY RAYMOND BURDON AS TO THE FORMATION OF THE
APPLICANT AT THE FIRST HEARING OF THIS APPLICATION ON JUNE 10TH,
1969. BURDON IDENTIFIED AND FILED MINUTES OF THE TWO ORGANIZA-
TIONAL MEETINGS HELD BY THE APPLICANT AND TESTIFIED THAT THEY WERE
AN ACCURATE RECORD OF THE PROCEEDINGS.

5. ACCORDING TO THE MINUTES AND BURDON'S TESTIMONY, A MEETING WAS HELD AT 227 COLLEGE STREET IN TORONTO ON APRIL 21ST, 1969 COMMENCING AT 5:30 P.M. PRESENT AT THE MEETING WERE BURDON, JOHN MEIORIN, PATRICK MURPHY, OTELLO ONGARO AND FRANK GRISOLIA. MEIORIN OPENED THE MEETING BY STATING THAT ITS PURPOSE WAS TO DISCUSS THE FORMATION OF A UNION FOR ALL THE WORKERS IN THE CONSTRUCTION TRADES. MEIORIN WAS NAMED PRO TEM. CHAIRMAN AND BURDON PRO TEM. RECORDING SECRETARY BY THOSE PRESENT. IT WAS AGREED AMONG THEM TO FORM A NEW TRADE UNION FOR THE PURPOSE STATED BY MEIORIN. MURPHY UNDERTOOK TO HAVE A CONSTITUTION PREPARED AND MEIORIN UNDERTOOK TO CALL A MEETING AT SUCH TIME AS THE CONSTITUTION WAS DRAFTED. MEIORIN WAS RESPONSIBLE FOR A LETTER DATED APRIL 23RD, 1969 BEING SENT TO THOSE PERSONS WHOM THE ORIGINATORS OF THE APPLICANT THOUGHT WOULD BE INTERESTED IN JOINING THE PROPOSED NEW UNION. IT APPEARS THAT THE LETTERS WERE SENT TO EMPLOYEES OF THE RESPONDENT AND ALSO EMPLOYEES OF RIA CONSTRUCTION COMPANY AND MEDITERRANEAN CONSTRUCTION. THE LETTER INVITED THE RECEIVERS OF THEM TO ATTEND A MEETING AT THE CONROY HOTEL IN TORONTO ON SUNDAY, APRIL 27TH, COMMENCING AT 9:00 A.M., FOR THE PURPOSE OF FORMING A CANADIAN UNION FOR CONSTRUCTION WORKERS.

6. THE MEETING ON SUNDAY, APRIL 27TH, 1969 WAS ATTENDED BY THIRTY-THREE PERSONS INCLUDING THE FIVE NAMED PERSONS WHO ATTENDED THE MEETING ON APRIL 21ST, 1969. WITHOUT GOING INTO THE DETAILS, A DRAFT OF THE CONSTITUTION WAS PRESENTED TO THOSE PRESENT AND WAS UNANIMOUSLY ADOPTED BY THEM. THOSE IN ATTENDANCE THEREUPON SIGNED A COMBINED APPLICATION FOR MEMBERSHIP AND RECEIPT IN THE APPLICANT AND PAID A ONE DOLLAR ADMISSION OR INITIATION FEE. THOSE PRESENT THEREUPON NOMINATED AND ELECTED OFFICERS FOR THE APPLICANT, ALL IN ACCORDANCE WITH THE PROVISIONS OF ITS CONSTITUTION. MEIORIN WAS ELECTED AS GENERAL PRESIDENT, MURPHY AS GENERAL VICE-PRESIDENT, GRISOLIA AS GENERAL SECRETARY-TREASURER AND BURDON AS GENERAL CORRESPONDING OR RECORDING SECRETARY. OTELLO ONGARO WAS ELECTED AS ONE OF TWO TRUSTEES. TWO OTHER PERSONS WERE ELECTED AS GENERAL EXECUTIVE BOARD MEMBERS.

7. BY LETTER DATED MAY 9TH, COUNSEL FOR THE INTERVENER ALLEGED THAT CERTAIN EMPLOYEES OF THE RESPONDENT, WHOM HE NAMED, DID NOT MAKE ANY FINANCIAL PAYMENT TO THE APPLICANT IN CONNECTION WITH THEIR PURPORTED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT. IN THE ALTERNATIVE, COUNSEL FOR THE INTERVENER ALLEGED THAT IF ANY OF THE NAMED EMPLOYEES MADE ANY FINANCIAL PAYMENT THE MONEY WAS GIVEN TO THEM BY THE BUSINESS AGENTS OF THE APPLICANT AND THAT THE SAID EMPLOYEES IMMEDIATELY RETURNED THIS MONEY TO THE SAID BUSINESS AGENTS. COUNSEL SUBMITTED THAT IN EITHER OF THESE CIRCUMSTANCES THE EMPLOYEES CONCERNED DID NOT MAKE ANY PERSONAL FINANCIAL SACRIFICE AT THE TIME THEY PURPORTED TO SIGN APPLICATIONS FOR MEMBERSHIP AND THAT THEREFORE, HAVING REGARD TO THE BOARD'S REQUIREMENTS WITH REGARD TO EVIDENCE OF

MEMBERSHIP, NO WEIGHT CAN BE GIVEN TO THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT.

8. THE BOARD, FOLLOWING ITS USUAL PROCEDURE, MADE ITS OWN INITIAL INVESTIGATION INTO THE ALLEGATIONS OF THE INTERVENER. SUBSEQUENT TO THAT INVESTIGATION, THE BOARD LISTED THE APPLICATION FOR CONTINUATION OF HEARING FOR THE PURPOSE OF INQUIRING INTO THE CIRCUMSTANCES SURROUNDING THE PAYMENT OF INITIATION FEES TO THE APPLICANT BY FOUR NAMED EMPLOYEES OF THE RESPONDENT ON WHOSE BEHALF THE APPLICANT HAD SUBMITTED EVIDENCE OF MEMBERSHIP AND MORE PARTICULARLY WHETHER THEY DID, IN FACT, PAY ANY INITIATION FEES TO THE APPLICANT ON THEIR OWN BEHALF. AT THE CONTINUATION OF THE HEARING ON JULY 14TH AND 15TH, THE FOUR NAMED EMPLOYEES AND MEIORIN, MURPHY, GRISOLIA AND ONGARO, WHO ARE SHOWN AS COLLECTORS OF A ONE DOLLAR INITIATION FEE ON THE RECEIPT PORTION OF THE COMBINED APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS IN QUESTION, WERE CALLED AS WITNESSES BY THE BOARD UNDER SUBPOENA. AFTER MAKING ITS OWN INQUIRIES, ALL PARTIES TO THE PROCEEDINGS WERE PERMITTED TO EXAMINE THE WITNESSES.

9. THE EVIDENCE MAY BE SUMMARIZED AS FOLLOWS. ALL OF THE EMPLOYEES OF THE RESPONDENT WHO HAD SIGNED AN APPLICATION FOR MEMBERSHIP IN THE PREDECESSOR TO THE APPLICANT, PRIOR TO THE TIME THAT THAT ENTITY MADE ITS UNSUCCESSFUL APPLICATION FOR CERTIFICATION REFERRED TO IN PARAGRAPH 3 OF THIS DECISION, WERE GIVEN ONE DOLLAR WHEN THEY ENTERED THE MEETING ROOM ON APRIL 27TH. PRIOR TO THE ACTUAL COMMENCEMENT OF THE MEETING MEIORIN TOLD THEM THAT THE PRIOR APPLICATION OF THE CANADIAN UNION OF CONSTRUCTION WORKERS WAS DISMISSED BECAUSE THIS BOARD HAD FOUND IT WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT. MEIORIN STATED THAT SINCE THE BOARD HAD FOUND THAT THE ENTITY WHICH THEY HAD PREVIOUSLY JOINED WAS NOT A TRADE UNION THEY WERE ENTITLED TO A REFUND OF THE INITIATION FEE WHICH THEY HAD PAID TO JOIN THAT ORGANIZATION.

10. AFTER THE ADOPTION OF THE CONSTITUTION OF THE PRESENT APPLICANT, MEIORIN, MURPHY, GRISOLIA AND ONGARO SAT AT A TABLE AND THOSE PRESENT AT THE SUNDAY MEETING COMPLETED THE APPLICATION PORTION OF THE MEMBERSHIP CARDS AND ONE OF THE FOUR ABOVE-MENTIONED OFFICIALS OF THE APPLICANT COMPLETED THE RECEIPT PORTION OF THE CARDS AND COLLECTED A ONE DOLLAR INITIATION FEE. THERE WAS SOME CONFLICT IN THE EVIDENCE AS TO WHICH OF THE FOUR OFFICIALS COLLECTED THE DOLLAR INITIATION FEE FROM THE EMPLOYEES. WE ARE SATISFIED, HOWEVER, THAT THE OFFICIAL WHOSE SIGNATURE APPEARS AS COLLECTOR OF THE FEE ON THE RECEIPT PORTION OF THE CARD WAS, IN FACT, THE COLLECTOR. IT APPEARS THAT ALL OF THE PERSONS WHO HAD BEEN GIVEN A DOLLAR AT THE OUTSET OF THE

MEETING IN THE MANNER DESCRIBED ABOVE SIGNED AN APPLICATION FOR MEMBERSHIP IN THE NEWLY FORMED CANADIAN UNION OF CONSTRUCTION WORKERS AND PAID A DOLLAR INITIATION FEE IN THE NEW ENTITY.

11. ACCORDING TO THE EVIDENCE, THE PROCEDURE OF SIGNING THOSE IN ATTENDANCE AT THE MEETING INTO MEMBERSHIP AND THE COLLECTING OF THE INITIATION FEE TOOK PLACE IN A SHORT PERIOD OF TIME AND MURPHY, GRISOLIA AND ONGARO IMMEDIATELY DEPOSITED THE CARDS UPON WHICH THEY HAD SIGNED AS COLLECTORS ON THE RECEIPT PORTION TOGETHER WITH THE DOLLAR PAYMENTS ON EACH CARD ON THE TABLE IN FRONT OF MEIORIN. MEIORIN COUNTED THE MEMBERSHIP CARDS AND THE DOLLAR PAYMENTS AND SATISFIED HIMSELF THAT THE AMOUNT OF MONEY CORRESPONDED WITH THE NUMBER OF CARDS. MEIORIN, HOWEVER, MADE NO SPECIFIC VERBAL INQUIRIES OF THE OTHER THREE COLLECTORS AS TO WHETHER EACH OF THE PERSONS FOR WHOM THEY SUBMITTED APPLICATIONS FOR MEMBERSHIP AND HAD SIGNED AS COLLECTOR HAD PAID THE INITIATION FEE ON THEIR OWN BEHALF.

12. SOME OF THE PERSONS WHO ATTENDED THE MEETING HAD TO LEAVE EARLY PRIOR TO THE SIGNING OF THE APPLICATIONS FOR MEMBERSHIP IN THE UNION. THE EVIDENCE IS THAT THESE EMPLOYEES WENT TO THE OFFICE OF THE APPLICANT THE FOLLOWING DAY OR ON SUBSEQUENT DAYS THEREAFTER AND SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT AND PAID A ONE DOLLAR INITIATION FEE. ALSO, ACCORDING TO THE EVIDENCE OTHER EMPLOYEES, WHO WERE NOT AT THE MEETING ON APRIL 27TH, SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT AND PAID A DOLLAR INITIATION FEE. IN ALL CASES EITHER GRISOLIA OR ONGARO ARE SHOWN AS COLLECTORS OF THE INITIATION FEE. EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP ARE AMONG THOSE WHO SIGNED APPLICATIONS FOR MEMBERSHIP AND PAID AN INITIATION FEE AT SOME TIME AFTER THE ORGANIZATION MEETING ON SUNDAY, APRIL 27TH. WITH RESPECT TO THOSE APPLICATIONS FOR MEMBERSHIP IT IS CLEAR FROM THE EVIDENCE THAT MEIORIN MADE NO INQUIRIES OF ANY SORT OF THE COLLECTORS.

13. FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY WAS FILED OVER THE SIGNATURE OF JOHN MEIORIN COVERING THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT ON BEHALF OF EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

14. COUNSEL FOR THE INTERVENER SUBMITS THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF EMPLOYEES OF THE RESPONDENT TO WHOM THE ONE DOLLAR INITIATION FEE WAS RETURNED FOR THE PAYMENT MADE ON THE UNSUCCESSFUL APPLICATION OF THE PREDECESSOR TO THE APPLICANT IS VIRTUALLY IDENTICAL TO THE FACT SITUATION

THAT EXISTED IN THE DRAVO OF CANADA LTD. CASE, CCH 58 CLLC 1715, AND THAT FOLLOWING THE PRINCIPLES ENUNCIATED BY THE BOARD IN ITS DECISION IN THAT CASE, THE EVIDENCE OF MEMBERSHIP DOES NOT MEET THE BOARD'S REQUIREMENTS AND MUST BE REJECTED. COUNSEL FURTHER SUBMITS THAT THE ABOVE REFERRED TO EMPLOYEES DID NOT, IN FACT, EVEN BECOME MEMBERS OF THE APPLICANT. COUNSEL ARGUES THAT THE CONSTITUTION OF THE APPLICANT ONLY PERMITS MEMBERS TO ELECT OFFICERS AND THAT SINCE THOSE EMPLOYEES WERE NOT MEMBERS, THE APPLICANT AS WELL HAS NOT ESTABLISHED ITS ENTITLEMENT TO THE STATUS OF A TRADE UNION.

15. IN THE DRAVO OF CANADA LTD. CASE (SUPRA), A PRIOR APPLICATION BY DRAVO EMPLOYEES ASSOCIATION WAS DISMISSED BECAUSE THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT DID NOT MEET THE BOARD'S REQUIREMENTS RESPECTING MEMBERSHIP IN THAT THE MONEY PAID BY THE MEMBERS HAD BEEN PAID ON CONDITION THAT IT WOULD BE REFUNDED IN THE EVENT THAT THE APPLICATION WAS UNSUCCESSFUL. AFTER THE DISMISSAL OF THE APPLICATION A MEETING WAS CALLED FOR THE PURPOSE OF CONSTITUTING A NEW ASSOCIATION (THE APPLICANT IN THE CASE BEFORE THE BOARD) AND AT THE COMMENCEMENT OF THAT MEETING THE MONEY COLLECTED IN CONNECTION WITH THE PREVIOUS APPLICATION WAS RETURNED TO THE PREVIOUS MEMBERS WHO WERE PRESENT. THEN THE APPLICANT ASSOCIATION WAS SET UP, OFFICERS ELECTED, A CONSTITUTION APPROVED, APPLICATIONS FOR MEMBERSHIP SIGNED AND INITIATION FEES COLLECTED IN THE SAME AMOUNT AS THE MONEY THAT HAD BEEN RETURNED AT THE BEGINNING OF THE MEETING. THE EVIDENCE OF MEMBERSHIP SUBMITTED TO THE BOARD IN CONNECTION WITH THE SECOND APPLICATION CONSISTED IN THE MAIN OF THE CARDS SO SIGNED TOGETHER WITH RECEIPTS SHOWING PAYMENT OF THE MONIES SO COLLECTED. THE POSITION TAKEN BY THE BOARD WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED IN THE SECOND APPLICATION IS SET OUT AS FOLLOWS AT 1716:

ON A NUMBER OF PREVIOUS OCCASIONS THE BOARD HAS SET OUT ITS VIEWS WITH RESPECT TO THE SIGNIFICANCE IT ATTACHES TO MONEY PAYMENT. SEE FOR EXAMPLE THE R.C.A. VICTOR COMPANY LTD. CASE, (1953) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, ¶17,067. THERE IS NO NEED TO REITERATE THESE PRINCIPLES HERE OTHER THAN TO POINT OUT THAT WHERE THE EVIDENCE OF MEMBERSHIP SUBMITTED BY A TRADE UNION CONSISTS OF MEMBERSHIP CARDS AND RECEIPTS WHAT THE BOARD IS CONCERNED WITH IS A VOLUNTARY MONEY CONTRIBUTION MADE ON HIS OWN BEHALF BY AN APPLICANT FOR MEMBERSHIP IN THE TRADE UNION. IN OTHER WORDS AS WAS SAID IN THE R.C.A. VICTOR COMPANY LTD. CASE (SUPRA) THERE MUST BE SOME "FINANCIAL SACRIFICE" MADE BY THE PERSON SEEKING MEMBERSHIP.

IN THE PRESENT CASE WE ARE NOT SATISFIED THAT THERE HAS BEEN A MONETARY CONTRIBUTION IN THE SENSE IN WHICH THESE WORDS HAVE BEEN USED BY THE BOARD. TO HOLD OTHERWISE WOULD TEND TO CONSTITUTE AN OPEN INVITATION TO CIRCUMVENT THE BOARD'S WELL-ESTABLISHED POLICIES IN THESE MATTERS. IN OUR OPINION SOME REASONABLE TIME MUST ELAPSE BETWEEN THE REPAYMENT OF THE MONEY AND THE COLLECTION OF THE NEW INITIATION FEE, BEFORE IT CAN BE SAID THAT THE NEW PAYMENT SHOULD BE REGARDED AS CONSTITUTING CONFIRMATORY EVIDENCE OF THE DESIRE OF THE PAYER TO BECOME A MEMBER. ESPECIALLY IS THIS SO WHERE, AS HERE, THE AMOUNT COLLECTED ON THE SECOND OCCASION IS THE SAME AS [OR, IT MIGHT BE, LESS] THAN THE SUM ORIGINALLY COLLECTED AND THEN RETURNED TO THE MEMBER.

AS WE HAVE ALREADY INDICATED, NO SUFFICIENT INTERVAL OF TIME HAD ELAPSED IN THE PRESENT CASE AND THE APPLICATION MUST THEREFORE BE DISMISSED ON THE GROUND THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT DOES NOT MEET THE BOARD'S STANDARDS IN SUCH MATTERS.

16. WHILE THERE ARE MANY SIMILARITIES BETWEEN THE FACT SITUATION IN THE DRAVO CASE AND THE INSTANT APPLICATION, THERE IS ONE ESSENTIAL DIFFERENCE. IN THE EARLIER CASE, THE FIRST APPLICATION HAD BEEN DISMISSED ON THE GROUNDS THAT THE MONEY PAID BY THE MEMBERS IN RESPECT OF THAT APPLICATION HAD BEEN PAID ON CONDITION THAT IT WOULD BE REFUNDED IN THE EVENT THAT THE APPLICATION WAS UNSUCCESSFUL. THERE IS NO SUGGESTION IN THE INSTANT CASE THAT THE INITIATION FEE PAID AT THE TIME THE EMPLOYEES OF THE RESPONDENT JOINED THE ORIGINAL CANADIAN UNION OF CONSTRUCTION WORKERS WOULD BE REFUNDED IN THE EVENT THAT THE APPLICATION WAS UNSUCCESSFUL. IN THE CASE BEFORE US, THE FIRST APPLICATION WAS DISMISSED BECAUSE THE BOARD WAS NOT SATISFIED THAT THE APPLICANT HAD TAKEN THE NECESSARY ORGANIZATIONAL STEPS TO FORM A TRADE UNION WITHIN THE MEANING OF THE ACT. COUNSEL FOR THE APPLICANT SUBMITS THAT IN VIEW OF THE BOARD'S FINDING IN ITS DECISION OF APRIL 18TH, 1969 (BOARD FILE NO. 15856-68-R) THAT THE APPLICANT WAS NOT ENTITLED TO THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J), THE FOUNDERS OF THE ORIGINAL CANADIAN UNION OF CONSTRUCTION WORKERS LOOKED UPON THAT ENTITY AS BEING DEFUNCT, SINCE THE SOLE MOTIVATION IN FORMING THE ORGANIZATION WAS TO ESTABLISH A TRADE UNION. COUNSEL ARGUES THAT THE FOUNDERS ACCORDINGLY FELT UNDER AN OBLIGATION TO RETURN THE INITIATION FEE TO THOSE EMPLOYEES WHO HAD JOINED THAT ORGANIZATION. COUNSEL FURTHER POINTED OUT THAT THE ORIGINAL DOLLAR INITIATION FEE WAS PAID TO

THE EMPLOYEES CONCERNED PRIOR TO THE FORMAL COMMENCEMENT OF THE ORGANIZATIONAL MEETING OF THE NEW APPLICANT. THAT IS TO SAY, HAVING BEEN GIVEN BACK THEIR ORIGINAL DOLLAR INITIATION FEE THEY WERE UNDER NO OBLIGATION TO EVEN GO TO THE MEETING OR JOIN THE NEW ENTITY. THE EVIDENCE SUGGESTS, HOWEVER, THAT ALL EMPLOYEES OF THE RESPONDENT WHO JOINED THE ORIGINAL ORGANIZATION OF THE SAME NAME AS THE PRESENT APPLICANT DID JOIN THE APPLICANT, ALTHOUGH NOT ALL OF THEM DID SO AT THE APRIL 27TH MEETING.

17. AS WILL SUBSEQUENTLY BECOME APPARENT, IT IS NOT NECESSARY IN THIS CASE TO MAKE A DETERMINATION AS TO WHETHER THE PRINCIPLES SET OUT IN THE DRAVO CASE ARE APPLICABLE TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE. THAT IS TO SAY, WE ARE NOT CALLED UPON TO DECIDE WHETHER THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT FOR EMPLOYEES OF THE RESPONDENT TO WHOM THE INITIATION FEE IN THE FIRST APPLICATION WAS RETURNED MEETS THE BOARD'S MEMBERSHIP REQUIREMENTS. WE WOULD COMMENT, HOWEVER, THAT THE PROCEDURE ADOPTED BY THE APPLICANT WAS ILL-ADVISED AND AT BEST STRAINS THE BOARD'S MINIMUM REQUIREMENTS AS TO ACCEPTABLE EVIDENCE OF MEMBERSHIP. WE ARE, HOWEVER, SATISFIED THAT THIS EVIDENCE OF MEMBERSHIP SATISFIES THE REQUIREMENTS OF THE APPLICANT'S OWN CONSTITUTION AND IN NO WAY IMPUGNS THE STATUS OF THE APPLICANT. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

18. WE COME NOW TO A CONSIDERATION OF THE FORM 54, DECLARATION CONCERNING MEMBERSHIP EVIDENCE FILED OVER THE SIGNATURE OF MEIORIN. PARAGRAPH 3 OF THAT DOCUMENT READS:

(WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN PART OF RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES) ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:

THERE IS NO STATEMENT FOLLOWING THE WORDS "EXCEPT IN THE FOLLOWING INSTANCES".

19. AS WE HAVE ALREADY STATED, MEIORIN, WHO SIGNED THE FORM 54, DID NOT MAKE ANY INQUIRIES OF THE OTHER THREE OFFICIALS OF THE APPLICANT WHO WERE COLLECTORS AT THE APRIL 27TH MEETING. ALL OF THE COLLECTORS, HOWEVER, WERE SIGNING INTO MEMBERSHIP IN THE APPLICANT EMPLOYEES OF THE RESPONDENT AND OF RIA CONSTRUCTION LIMITED AND MEDITERRANEAN CONSTRUCTION AND WERE COLLECTING THE INITIATION FEES AT THE SAME TIME AND EVEN AT THE SAME TABLE. MEIORIN ADMITTED THAT SINCE HE HIMSELF WAS BUSY SIGNING EMPLOYEES INTO MEMBERSHIP AND COLLECTING INITIATION FEES, HE DID NOT HAVE ACTUAL PERSONAL KNOWLEDGE AS TO WHETHER THE EMPLOYEES WHO WERE SIGNED INTO MEMBERSHIP BY THE OTHER COLLECTORS PAID A DOLLAR INITIATION FEE ON THEIR OWN BEHALF. FURTHER, AS WE HAVE NOTED EARLIER, MEIORIN MADE NO INQUIRIES OF ONGARO OR GRISOLIA WITH REGARD TO THE PAYMENT OF INITIATION FEES BY EMPLOYEES WHO COMPLETED APPLICATIONS FOR MEMBERSHIP ON DAYS SUBSEQUENT TO THE MEETING ON APRIL 27TH.

20. COUNSEL FOR THE INTERVENER SUBMITS THAT AS A RESULT OF MEIORIN'S FAILURE TO MAKE INQUIRIES OF THE COLLECTORS BOTH AT THE MEETING ON APRIL 27TH AND MORE PARTICULARLY HIS FAILURE TO MAKE INQUIRIES OF ONGARO AND GRISOLIA ON THE MEMBERSHIP CARDS SIGNED AFTER APRIL 27TH, PARAGRAPH 3 OF FORM 54 IS A FALSE STATEMENT. IN LIGHT OF THE BOARD'S STRICT REQUIREMENTS WITH REGARD TO THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, COUNSEL ARGUES THAT THE APPLICATION MUST BE DISMISSED. COUNSEL FOR THE APPLICANT SUBMITS THAT IN RELATION TO THE APPLICATION FOR MEMBERSHIP SIGNED BY EMPLOYEES AT THE APRIL 27TH MEETING SINCE THE INITIATION FEES WERE PAID TO THE OTHER COLLECTORS IN THE PRESENCE OF MEIORIN, FOR ALL PRACTICAL PURPOSES MEIORIN DID HAVE PERSONAL KNOWLEDGE AND ACCORDINGLY, IN ESSENCE, PARAGRAPH 3 OF FORM 54 IS NOT INACCURATE.

21. THE BOARD'S REQUIREMENTS CONCERNING FORM 8 (FORM 54 IS THE CORRESPONDING FORM FOR THE CONSTRUCTION INDUSTRY) HAVE BEEN SPELLED OUT IN A NUMBER OF DECISIONS. THE VALLEY TRANSPORTATION COMPANY LIMITED CASE, OLRB M.R. Nov. 1963 448 READS AS FOLLOWS AT 452:

...THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE,

AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM. AS WAS SAID BY THE BOARD IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,110, AT P. 12,204,

ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT.

22. IN THE COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIP-BUILDING & ENGINEERING LIMITED CASE, OLRB M.R. JUNE 1967 246, AFTER REFERRING TO A NUMBER OF OTHER DECISIONS THE BOARD STATED AT 255:

...THE WORDS "MAY WELL WEIGH HEAVILY AGAINST AN APPLICANT" APPEAR IN MOST OF THE PASSAGES CITED FROM THOSE DECISIONS. IF ANYTHING, THE PASSAGE MAKES IT CLEAR THAT CARELESSNESS IN COMPLETING FORM 8 MAY JUSTIFY THE BOARD IN DISMISSING AN APPLICATION. FURTHER, THE CASES THEMSELVES DO NOT IN OUR VIEW STAND FOR THE DISTINCTION WHICH COUNSEL SEEKS TO MAKE. ALL MAKE IT CLEAR THAT IT IS WEIGHT, NOT ADMISSIBILITY PER SE, WHICH IS IN ISSUE. HOWEVER, IT IS THE FAILURE TO DISCLOSE WHICH AFFECTS THE WEIGHT WHICH THE BOARD MAY GIVE THE MEMBERSHIP EVIDENCE. THE WEBSTER AIR EQUIPMENT CASE IS QUITE CLEAR ON THIS POINT.

WHILE IT MAY BE TRUE THAT IN MOST OF THE CASES THE FAILURE TO DISCLOSE OF THE CARELESSNESS REFERS TO A FAILURE TO DISCLOSE "NON-PAYS" OR "NON-SIGNS", WE DO NOT ACCEPT THE PROPOSITION THAT THESE "IRREGULARITIES" ARE THE ONLY ONES WHICH "MAY WEIGH HEAVILY AGAINST AN APPLICANT" IF NOT DISCLOSED. THE WEBSTER AIR EQUIPMENT CASE SPEAKS OF "A FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS". IT IS SURELY NOT OPEN TO ARGUMENT THAT IF THE FORM 8, AS IT DOES, REQUIRES INSTANCES WHERE THE PERSON SIGNING AS COLLECTOR HAS NOT IN FACT RECEIVED THE MONEY TO BE DISCLOSED, THESE ARE NOT MATERIAL FACTS WITHIN THE MEANING OF THAT DECISION.

(SEE ALSO W. N. CONSTRUCTION (OTTAWA) LTD. CASES, OLRB M.R. AUG. 1968 458 AND NATIONAL STEEL CAR CORPORATION LIMITED CASE, OLRB M.R. JAN. 1966 738.)

23. IN SUMMARY THEN, IT IS CLEAR THAT THERE IS A DUTY ON THE APPLICANT TO TAKE ALL THE NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED IN THE FORM 54 IS TRUE AND ACCURATE. IN THE CASE OF THE MEMBERSHIP APPLICATIONS SIGNED AT THE APRIL 27TH MEETING, MEIORIN SHOULD HAVE EITHER MADE INQUIRIES OF THE OTHER THREE COLLECTORS OR AT LEAST DISCLOSED ON THE FORM 54 ALL OF THE CIRCUMSTANCES UNDER WHICH THE APPLICATIONS FOR MEMBERSHIP AND THE COLLECTION OF THE INITIATION FEES WERE MADE. IN THE CASE OF THE MEMBERSHIP CARDS WHICH WERE SIGNED AFTER THE APRIL 27TH MEETING, MEIORIN WAS UNDER A POSITIVE OBLIGATION TO MAKE INQUIRIES OF ONGARO AND GRISOLIA CONCERNING THE PAYMENT OF THE INITIATION FEES. IN LIGHT OF THE PRINCIPLES ENUNCIATED IN THE ABOVE REFERRED TO CASES, HIS FAILURE TO DO SO WAS A CLEAR BREACH OF THE OBLIGATION PLACED UPON HIM BY PARAGRAPH 3 OF FORM 54. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT IT CANNOT PLACE ANY RELIANCE ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT FOR EMPLOYEES OF THE RESPONDENT IN THIS APPLICATION.

24. IN VIEW OF THE ABOVE FINDING, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE OTHER ISSUES RAISED IN THIS APPLICATION. WE WOULD POINT OUT, HOWEVER, THAT THE APPLICANT HAS NOT ENTERED INTO ANY COLLECTIVE AGREEMENTS PERTAINING TO THE CONSTRUCTION INDUSTRY. IN THESE CIRCUMSTANCES, IT CANNOT BE SAID THAT THE APPLICANT IS A TRADE UNION "THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY" WITHIN THE MEANING OF SECTION 90(B) OF THE LABOUR RELATIONS ACT (SEE BEN BRUINSMA AND SONS LIMITED CASE OLRB M.R. FEB. 1964 647). FURTHER, WITH REGARD TO THE ISSUE AS TO WHAT CONSTITUTES AN APPROPRIATE BARGAINING UNIT, THE PARTIES ARE DIRECTED TO THE BOARD'S DECISIONS IN THE WINTER & SONS CASE, OLRB M.R. FEB. 1967 889 AND MANOR CARPENTERS CASE, OLRB M.R. JAN. 1969 1026.

25. THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT, AND IN PARTICULAR THE FORM 54, DOES NOT MEET THE BOARD'S MINIMUM STANDARDS. THE APPLICATION THEREFORE IS DISMISSED.

16109-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. RIA CONSTRUCTION LIMITED (RESPONDENT) V. BRICKLAYERS, MASONS & TILESETTERS UNION, LOCAL No. 2 ONTARIO (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND J. MEIORIN FOR THE APPLICANT, F. R. VON VEH AND Z. DE VUONO FOR THE RESPONDENT, R. KOSKIE AND J. ZANUSSI FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 28, 1969.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC CONSTRUCTION AREA No. 8.
2. THE EVIDENCE ADDUCED WITH RESPECT TO THIS APPLICATION IN ALL ESSENTIAL RESPECTS IS THE SAME AS THE EVIDENCE ADDUCED IN THE ZACHARY DE VUONO LIMITED CASE (BOARD FILE No. 16108-69-R). MORE PARTICULARLY, EMPLOYEES OF THE RESPONDENT WHO HAD SIGNED APPLICATIONS FOR MEMBERSHIP IN THE PREDECESSOR CANADIAN UNION OF CONSTRUCTION WORKERS AND HAD PAID A ONE DOLLAR INITIATION FEE HAD ONE DOLLAR RETURNED TO THEM AT THE COMMENCEMENT OF THE ORGANIZATIONAL MEETING OF THE PRESENT APPLICANT ON APRIL 27TH, 1969. FURTHER, EMPLOYEES OF THE RESPONDENT WHO WERE GIVEN ONE DOLLAR AT THE COMMENCEMENT OF THE MEETING SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT AND PAID A DOLLAR INITIATION FEE AFTER THE ADOPTION OF THE CONSTITUTION. THE SAME OFFICIALS OF THE UNION WERE THE COLLECTORS OF INITIATION FEES FROM EMPLOYEES OF THE RESPONDENT AS IN THE ZACHARY DE VUONO LIMITED CASE AND THE INITIATION FEES WERE COLLECTED IN THE IDENTICAL MANNER. ALSO, EMPLOYEES OF THE RESPONDENT SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT AND PAID A ONE DOLLAR INITIATION FEE TO OFFICIALS OF THE APPLICANT SUBSEQUENT TO THE APRIL 27TH MEETING. JOHN MEIORIN, THE GENERAL PRESIDENT OF THE APPLICANT, MADE NO INQUIRIES OF THE OTHER THREE COLLECTORS AT THE MEETING OF APRIL 27TH NOR OF THE COLLECTORS WHO SIGNED EMPLOYEES OF THE RESPONDENT INTO MEMBERSHIP AND COLLECTED AN INITIATION FEE FROM THEM SUBSEQUENT TO THE APRIL 27TH MEETING. THE FORM 54 FILED IN THE INSTANT APPLICATION OVER THE SIGNATURE OF MEIORIN IS IN THE SAME FORM AS IN THE ZACHARY DE VUONO LIMITED CASE.
3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
4. FOR THE REASONS GIVEN IN THE ZACHARY DE VUONO LIMITED CASE THE BOARD FINDS THAT THE EVIDENCE OF MEMBERSHIP FILED IN THE INSTANT APPLICATION DOES NOT MEET THE BOARD'S STANDARDS AND WE ACCORDINGLY ARE UNABLE TO PLACE RELIANCE UPON IT.
5. THE APPLICATION THEREFORE IS DISMISSED.

16134-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT)
V. MEDITERRANEAN CONSTRUCTION (RESPONDENT) V. LABOURERS' INTER-
NATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS AND J. MEIORIN FOR THE
APPLICANT, NO ONE FOR THE RESPONDENT, R. KOSKIE AND T. NEIL FOR
THE INTERVENER.

DECISION OF THE BOARD: JULY 28, 1969.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING
AGENT FOR "ALL BRICKLAYERS ASSISTANTS" IN THE EMPLOY OF THE RESPON-
DENT IN BOARD GEOGRAPHIC CONSTRUCTION AREA No. 8.

2. THE EVIDENCE ADDUCED WITH RESPECT TO THIS APPLICATION IN
ALL ESSENTIAL RESPECTS IS THE SAME AS THE EVIDENCE ADDUCED IN THE
ZACHARY DE VUONO LIMITED CASE (BOARD FILE No. 16108-69-R). AN
EARLIER APPLICATION FOR CERTIFICATION MADE BY THE PREDECESSOR
CANADIAN UNION OF CONSTRUCTION WORKERS FOR A UNIT OF EMPLOYEES OF
THE RESPONDENT WAS WITHDRAWN. EMPLOYEES OF THE RESPONDENT, HOWEVER,
HAD SIGNED APPLICATIONS FOR MEMBERSHIP IN THE PREDECESSOR AND HAD
PAID A ONE DOLLAR INITIATION FEE. AT LEAST SOME OF THESE EMPLOYEES
HAD ONE DOLLAR RETURNED TO THEM AT THE COMMENCEMENT OF THE ORGANIZA-
TIONAL MEETING OF THE PRESENT APPLICANT ON APRIL 27TH, 1969. FURTHER,
EMPLOYEES OF THE RESPONDENT WHO WERE GIVEN ONE DOLLAR AT THE
COMMENCEMENT OF THE MEETING SIGNED APPLICATIONS FOR MEMBERSHIP IN THE
APPLICANT AND PAID A DOLLAR INITIATION FEE AFTER THE ADOPTION OF THE
CONSTITUTION. THE SAME OFFICIALS OF THE UNION WERE COLLECTORS OF
INITIATION FEES FROM EMPLOYEES OF THE RESPONDENT AS IN THE ZACHARY
DE VUONO LIMITED CASE AND THE INITIATION FEES WERE COLLECTED IN THE
IDENTICAL MANNER. ALSO, EMPLOYEES OF THE RESPONDENT SIGNED APPLICA-
TIONS FOR MEMBERSHIP IN THE APPLICANT AND PAID A ONE DOLLAR INITIA-
TION FEE TO OFFICIALS OF THE APPLICANT SUBSEQUENT TO THE APRIL 27TH
MEETING. JOHN MEIORIN, THE GENERAL PRESIDENT OF THE APPLICANT,
MADE NO INQUIRES OF THE OTHER THREE COLLECTORS AT THE MEETING OF
APRIL 27TH NOR OF THE COLLECTORS WHO SIGNED EMPLOYEES OF THE RES-
PONDENT INTO MEMBERSHIP AND COLLECTED AN INITIATION FEE FROM THEM
SUBSEQUENT TO THE APRIL 27TH MEETING. THE FORM 54 FILED IN THE
INSTANT APPLICATION OVER THE SIGNATURE OF MEIORIN IS IN THE SAME
FORM AS IN THE ZACHARY DE VUONO LIMITED CASE.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN
THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. FOR THE REASONS GIVEN IN THE ZACHARY DE VUONO LIMITED CASE THE BOARD FINDS THAT THE EVIDENCE OF MEMBERSHIP FILED IN THE INSTANT APPLICATION DOES NOT MEET THE BOARD'S STANDARDS AND WE ACCORDINGLY ARE UNABLE TO PLACE RELIANCE UPON IT.

5. THE APPLICATION THEREFORE IS DISMISSED.

16211-69-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED (RESPONDENT) V. CANADIAN BUSINESS MACHINE WORKERS UNION (INTERVENER #1) V. CANADIAN OFFICE EMPLOYEES UNION No. 159 N.C.C.L. (INTERVENER #2).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: NORMAN H. GRAY FOR THE APPLICANT, J. C. ADAMS, Q.C., K. SCOTT, I. TARRANT, G. FOLLETT AND D. EMO FOR THE RESPONDENT; GEORGE MCCUTCHEON, J. SCORGIE, P. GIZZI AND W. IVES FOR INTERVENER #1; E. R. HUGHES AND J. L. LABONTE FOR INTERVENER #2.

DECISION OF THE BOARD: JULY 14, 1969.

1. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT SEEKS A BARGAINING UNIT COMPOSED OF ALL OFFSET PRESSMEN, LETTERPRESSMEN, THEIR APPRENTICES FEEDERS AND HELPERS IN THE EMPLOY OF THE RESPONDENT.

2. THE EFFECT OF THIS APPLICATION IS THAT THE APPLICANT PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT IS SEEKING TO SEVER A CRAFT UNIT OF APPROXIMATELY 25 EMPLOYEES FROM A BARGAINING UNIT OF 500 EMPLOYEES WHO ARE PRESENTLY REPRESENTED BY INTERVENER #1. INTERVENER #2 IS NOT AFFECTED BY THIS APPLICATION.

3. NONE OF THE PARTIES INTRODUCED ANY EVIDENCE BUT RELIED ON REPRESENTATIONS. THE REQUIREMENT FOR ADDUCING EVIDENCE IN CASES OF THIS NATURE IS SET OUT IN THE CANADIAN UNION OF OPERATING ENGINEERS V. CANADA SAND PAPERS LIMITED V. INTERNATIONAL CHEMICAL WORKERS UNION A.F.L. C.I.O.-C.L.C. ON BEHALF OF ITS LOCAL 652 1967 NOV. OLRB MTHLY. REP. 742 AND NEEDS NO FURTHER DISCUSSION. THIS IS PARTICULARLY SO IN THIS CASE BECAUSE THE RESPONDENT AND INTERVENER IN DOCUMENTS FILED WITH THIS BOARD DISPUTED THE APPLICATION ON A NUMBER OF VITAL ISSUES. THE APPLICANT HAD PROPER NOTICE OF THESE CONTESTED MATTERS AND DID NOT REQUEST ANY ADJOURNMENT TO ADDUCE EVIDENCE. IN THESE CIRCUMSTANCES WE ARE NOT PREPARED TO

BASE A DECISION IN FAVOUR OF THE APPLICANT ON ITS REPRESENTATIONS WHICH WERE CONTRADICTED BY THE REPRESENTATIONS OF THE RESPONDENT AND INTERVENER #1.

4. EVEN CONSIDERING THE REPRESENTATIONS AS EVIDENCE WE ARE NOT SATISFIED THAT THE APPLICANT HAS PROPERLY BROUGHT ITSELF WITHIN THE REQUIREMENTS NECESSARY FOR APPLICATIONS PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT HAS CONCEDED THAT THE LETTER PRESSMEN WHOM IT SEEKS TO INCLUDE IN THE CRAFT BARGAINING UNIT DO NOT BARGAIN AS A GROUP WITH THE OTHER EMPLOYEES IN THE APPLIED FOR UNIT. ACCORDINGLY THE APPLICANT CANNOT SATISFY THE REQUIREMENT THAT THIS GROUP OF EMPLOYEES COMMONLY BARGAIN SEPARATE AND APART FROM OTHER EMPLOYEES. WE ARE ALSO NOT SATISFIED THAT THE APPLICANT IS A TRADE UNION WHICH PERTAINS TO THE SKILLS OF LETTER-PRESSMEN. SEE INTERNATIONAL ASSOCIATION OF MACHINISTS V. DUPONT OF CANADA LIMITED, TEXTILE FIBRES DEPARTMENT V. DISTRICT 50, UNITED MINE WORKERS OF AMERICA LOCAL 13160 1965 JAN. OLRB MTHLY. REP. 539; INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON-WORKERS LOCAL 721 AFFILIATED WITH THE AMERICAN FEDERATION OF LABOUR V. ART WIRE AND IRON CO. LTD. 1954 CCH LLR TRANSFER BINDER 49-54 P. 17080; CLS 76-437 (OLRB).

5. HAD THE APPLICANT SATISFIED ALL THE REQUIREMENTS WE WOULD NOT HAVE EXERCISED OUR DISCRETION AND SEVERED THE CRAFT UNIT BECAUSE THE ONLY BASIS FOR THE APPLICATION WAS THAT THE APPLICANT HAD OBTAINED MEMBERSHIP AMONG THE CRAFT EMPLOYEES. AN APPLICANT WHO SEEKS TO SEVER A CRAFT BARGAINING UNIT SHOULD SHOW MORE THAN MERE ORGANIZATION OF CRAFT EMPLOYEES WHERE INDUSTRIAL STABILITY HAS BEEN ACHIEVED WITHOUT INJUSTICE TO CRAFT EMPLOYEES. SEE CANADIAN UNION OF OPERATING ENGINEERS V. CANADIAN FOUNDRIES & FORGINGS LTD. V. UNITED AUTOMOBILE WORKERS LOCAL 275 (1961) 61 CLLC 938 (OLRB).

6. FOR ALL THE ABOVE REASONS THE APPLICATION IS DISMISSED.

16283-69-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. I. M. I. UNDERGROUND CONTRACTORS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: F. GEMUS, P. WILSON AND O. BEDARD FOR THE APPLICANT AND L. J. VALIN, Q.C., AND F. WEILER FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 21, 1969.

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2. THIS IS AN APPLICATION FOR CERTIFICATION MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. THE RESPONDENT SUBMITTED IN ITS REPLY THAT THE WORK BEING DONE BY IT WAS A MINING OPERATION RATHER THAN ONE FALLING "WITHIN THE AMBIT OF THE CONSTRUCTION INDUSTRY". AFTER CONSIDERING THE EVIDENCE ADDUCED AT THE HEARING ON THIS POINT, TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT THE WORK IN QUESTION FALLS UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. WHILE IT IS TRUE THAT SOME MAINTENANCE WORK IS BEING DONE BY THE RESPONDENT, THIS IS BEING PERFORMED IN CONJUNCTION WITH ITS INSTALLATION OR CONSTRUCTION WORK AND IS NOT "MAINTENANCE WORK WHICH WAS AN INTEGRAL PART OF THE RESPONDENT'S PRODUCTION OPERATIONS" AS DESCRIBED IN DRAVO OF CANADA LTD., O.L.R.B. MONTHLY REPORT, JUNE 1967, P. 261. ACCORDINGLY, THE BOARD FINDS FURTHER THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT HAS APPLIED FOR A CRAFT UNIT CONSISTING OF JOURNEYMEN ELECTRICIANS, APPRENTICES AND HELPERS. IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO INCLUDE HELPERS IN SUCH A UNIT IN NORTHERN ONTARIO. ON THE OTHER HAND, IT IS CLEAR THAT THE APPLICANT HAS ORGANIZED THE PERSONS DESCRIBED BY THE RESPONDENT AS HELPERS. AFTER CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD HAS COME TO THE CONCLUSION IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THAT THE UNIT SHOULD BE DESCRIBED IN TERMS OTHER THAN THE USUAL CRAFT DESCRIPTION. THE BOARD THEREFORE FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE RESPONDENT'S ELECTRICAL INSTALLATION OPERATIONS WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING. FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM "ELECTRICAL INSTALLATION OPERATIONS" INCLUDES MAINTENANCE WORK INCIDENTAL TO SUCH OPERATIONS.

4. AN EXAMINER WAS APPOINTED IN THIS MATTER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF FOUR PERSONS CLAIMED BY THE RESPONDENT TO EXERCISE MANAGERIAL FUNCTIONS. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER, TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES THEREON. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT HERBERT WEEDEN, ONE OF THE FOUR PERSONS WHOSE STATUS WAS IN DOUBT, SHOULD BE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUND THAT HE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE BOARD FINDS THAT OMAR BEDARD AND PETER WILSON DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. IN THIS CONNECTION REFERENCE IS MADE TO SUCH CASES AS PRE-CON MURRAY LIMITED, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 328; UNI-FORM BUILDERS LTD., O.L.R.B. MONTHLY REPORT, MARCH 1967, P. 1019.

5. THE UNCONTRADICTED EVIDENCE OF MR. JAMES LUXTON IS THAT HE DOES NOT DO ANY WORK, DOES NOT CARRY TOOLS AND CONFINES HIS ACTIVITIES TO SUPERVISION. IT THUS DOES NOT BECOME NECESSARY TO DECIDE WHETHER MR. LUXTON EXERCISES MANAGERIAL FUNCTIONS SINCE HE WOULD BE EXCLUDED IN ANY EVENT FROM THE BARGAINING UNIT UNDER THE EXCLUSION OF NON-WORKING FOREMAN.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 18, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16297-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. PREMIER PLASTICS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: R. RUSSELL, A. JENKYN FOR THE APPLICANT; C. J. SMITH, GORDON MULLOCH, KURT F. SCHMID FOR THE RESPONDENT; GEORGE LUBBER, ROY BAILEY FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JULY 14, 1969.

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2. IN THIS CASE THE RESPONDENT ASKED THAT THE CLASSIFICATION "STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" BE EXCLUDED FROM THE BARGAINING UNIT. THE PRACTICE HAS BEEN THAT WHEN EITHER PARTY REQUESTS THIS EXCLUSION AND THERE IS A HISTORY OF EMPLOYING STUDENTS DURING THE SCHOOL VACATION PERIOD, THE BOARD WILL GRANT THE EXCLUSION. THIS PRACTICE ALSO APPLIES TO PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. THE BOARD HAS FOUND A BARGAINING UNIT WHICH INCLUDES BOTH PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD TO BE APPROPRIATE. THE REASONS FOR EXCLUDING BOTH CATEGORIES FROM THE FULL-TIME UNIT IS THAT THEY DO NOT HAVE THE SAME COMMUNITY OF INTEREST WITH THE FULL-TIME EMPLOYEES. THERE ARE EXCEPTIONAL CIRCUMSTANCES WHERE THE BOARD WILL INCLUDE THESE PERSONS IN THE BARGAINING UNIT OF FULL-TIME EMPLOYEES. SEE TEAMSTERS,

CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA V. THE ESSEX COUNTY HUMANE SOCIETY. BOARD FILE No. 16202-69-R. HOWEVER, WE SEE NO REASON IN THE INSTANT CASE TO DEPART FROM OUR USUAL PRACTICE. ACCORDINGLY, WE FIND THAT ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE REASONS GIVEN AT THE HEARING IT WILL NOT BE NECESSARY TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 20TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16317-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ALROS PRODUCTS LIMITED, CARRYING ON BUSINESS UNDER THE NAME POLYTARP PRODUCTS (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: JOHN R. MCPHERSON FOR THE APPLICANT,
AND D. G. KILGOUR FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 17, 1969.

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3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL OIL BURNER SERVICE MEN IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. AT THE HEARING, THE RESPONDENT QUERIED THE CONSTITUTIONAL CAPACITY OF THE APPLICANT TO REPRESENT OIL BURNER SERVICE MEN, BUT PRESENTED NO EVIDENCE OR ARGUMENT ON THE POINT. THE APPLICANT STATED AND THE BOARD ACKNOWLEDGES THAT IT NOW HAS BEEN CERTIFIED IN A NUMBER OF CASES AS BARGAINING AGENT FOR SUCH EMPLOYEES. THE BOARD RECOGNIZES THE PRACTICE ESTABLISHED BY THE APPLICANT OF GRANTING MEMBERSHIP TO AND OF REPRESENTING EMPLOYEES IN THE CATEGORY IN QUESTION AS SUFFICIENT TO SATISFY THE BOARD THAT THE EMPLOYEES IN THE PROPOSED UNIT ARE ELIGIBLE FOR MEMBERSHIP IN THE APPLICANT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 18, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16330-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ALLAN JOHNSTON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: B. CHERCOVER AND G. HARRISON FOR THE APPLICANT, BENJAMIN LAMB, Q.C., AND ALLAN JOHNSTON FOR THE RESPONDENT, J. J. KELLY, Q.C., FOR THE OBJECTORS.

DECISION OF THE BOARD: JULY 10, 1969.

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2. COUNSEL FOR THE RESPONDENT CHALLENGED THE BOARD'S JURISDICTION TO ENTERTAIN THIS APPLICATION ON ITS MERITS. IT WAS THE RESPONDENT'S POSITION THAT SINCE THE RESPONDENT HAD BEEN APPOINTED AN "AGENT" OF THE ONTARIO MILK MARKETING BOARD UNDER THE PROVISIONS OF THE MILK ACT 1965 AND WAS THEREFORE SUBJECT TO THE CONTROL AND DIRECTION OF THE ONTARIO MILK MARKETING BOARD, THE LABOUR RELATIONS ACT HAS NO APPLICATION TO THE RESPONDENT. WHILE THIS ISSUE WAS RAISED BY THE RESPONDENT, THE RESPONDENT FAILED TO SATISFY THE BOARD THAT THE RESPONDENT IS NOT SUBJECT TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. WE THEREFORE ASSERT JURISDICTION IN THIS MATTER.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF LISTOWEL AND INGERSOL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THERE WAS FILED IN THIS MATTER 15 INDIVIDUAL DOCUMENTS IN OPPOSITION TO THIS APPLICATION SIGNED BY 9 PERSONS WHO WERE CLAIMED BY THE APPLICANT AS MEMBERS. THE EVIDENCE ADDUCED THROUGH C. L. TABOR, AN EMPLOYEE OF THE RESPONDENT, SATISFIED THE BOARD CONCERNING THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE PETITIONS AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

6. THE APPLICANT CALLED 4 EMPLOYEES OF THE RESPONDENT AS WITNESSES WHO TESTIFIED IN SUPPORT OF ITS CHARGES THAT THE SIGNATURES WERE "OBTAINED AS A RESULT OF FALSE AND MISLEADING REPRESENTATIONS; THAT IT WAS CIRCULATED IN SUCH A MANNER AS TO INDICATE TO EMPLOYEES THAT IT ORIGINATED FROM, AND HAD THE SUPPORT OF, THE RESPONDENT'S MANAGEMENT."

7. THE EVIDENCE FAILED TO DISCLOSE THAT ANY PERSON REPRESENTING MANAGEMENT PARTICIPATED IN OR SUPPORTED THE ORIGINATION OR CIRCULATION OF THE PETITIONS.

8. MR. HAMILTON, AN EMPLOYEE CALLED BY THE APPLICANT, TESTIFIED THAT MR. TABOR HAD GIVEN HIM A PETITION TO SIGN AND ADVISED HIM, AMONG OTHER THINGS, THAT ANYONE WHO SIGNED A PETITION WOULD COME TO THE ATTENTION OF THE PRESIDENT OF THE RESPONDENT AND WOULD THEREFORE BE IN HIS FAVOUR. MR. HAMILTON STATED THAT HE SIGNED THE PETITION BECAUSE HE WAS AFRAID OF LOSING HIS JOB WHICH HE HAD HELD FOR ABOUT ONE MONTH. THE OTHER 3 EMPLOYEES CALLED IN SUPPORT OF THE CHARGES DID NOT SUGGEST THAT MR. TABOR HAD INDICATED THAT THE EMPLOYER WOULD KNOW WHO WOULD SIGN THE PETITION. ON THE CONTRARY, ONE OF THE OTHER WITNESSES TESTIFIED THAT WHEN TABOR ASKED HIM TO SIGN THE PETITION TABOR STATED THAT NO ONE WOULD EVER KNOW THAT HE HAD SIGNED.

9. WHILE THERE WAS OTHER EVIDENCE AS TO CERTAIN STATEMENTS MADE BY MR. TABOR, WE ARE SATISFIED THAT THESE OTHER STATEMENTS CLEARLY FELL WITHIN THE USUAL TYPE OF PROPAGANDA USED TO GAIN SUPPORT FOR OR OPPOSITION TO A UNION IN A CERTIFICATION CAMPAIGN AND DID NOT CONSTITUTE UNDUE INFLUENCE OR INTIMIDATION WHICH WOULD INVALIDATE THE PETITIONS. THE ONLY MATTER WHICH HAS CAUSED CONCERN TO THE BOARD IS THE CONFLICT OF EVIDENCE WITH RESPECT TO THE DISCLOSURE OF THE IDENTITY OF THE PETITIONERS TO MANAGEMENT.

10. IF WE WERE SATISFIED THAT THE EMPLOYEES SIGNED THE PETITIONS WITH THE BELIEF THAT MANAGEMENT WOULD BE SO INFORMED, WE WOULD BE IMPELLED TO FIND THAT SUCH BELIEF WOULD TEND TO DEPRIVE THE EMPLOYEES OF THE OPPORTUNITY OF FREELY EXPRESSING THEIR TRUE WISHES ON THE PETITIONS.

11. HOWEVER, ON THE FACTS OF THIS CASE, HAVING REGARD TO THE MANNER IN WHICH THE PETITIONS WERE CIRCULATED AWAY FROM THE COMPANY'S PREMISES, THE EVIDENCE OF ALL THE WITNESSES CALLED BY THE APPLICANT AND ESPECIALLY THE EVIDENCE OF THE WITNESS WHO TESTIFIED THAT NO ONE WOULD KNOW WHO HAD SIGNED THE PETITIONS, WE ARE NOT SATISFIED THAT MR. TABOR FOLLOWED A PATTERN OF CONDUCT IN OBTAINING SIGNATURES WHICH WOULD CAUSE UNDUE INFLUENCE OR INTIMIDATION TO THE EMPLOYEES. MR. HAMILTON MAY HAVE BELIEVED THAT HIS IDENTITY AS A PETITIONER MIGHT HAVE BEEN DISCLOSED, HOWEVER, IN VIEW OF THE OTHER EVIDENCE BEFORE THE BOARD IT WOULD APPEAR THAT HE MAY HAVE READ SOMETHING INTO MR. TABOR'S WORDS WHICH WAS NOT INTENDED OR EXPRESSED. HIS FEARS, WHICH WERE COMPOUNDED BY THE FACT THAT HE HAD ONLY RECENTLY COMMENCED HIS EMPLOYMENT, WERE NOT SHARED BY THE OTHER WITNESSES CALLED BY THE APPLICANT. WE ARE THEREFORE NOT PREPARED TO FIND THAT THE OTHER PETITIONERS SIGNED THE PETITIONS BECAUSE THEY SHARED SIMILAR FEARS. EVEN IF MR. HAMILTON'S PETITION IS DISCOUNTED THERE IS STILL SUFFICIENT DOUBT CAST ON THE APPLICANT'S MEMBERSHIP EVIDENCE BY THE OTHER PETITIONS TO BRING THE APPLICANT'S UNCHALLENGED MEMBERSHIP POSITION WELL BELOW 55 PER CENT. IN THESE CIRCUMSTANCES, HAVING REGARD TO ALL THE EVIDENCE BEFORE US, WE ARE OF OPINION THAT THE BOARD SHOULD OBTAIN THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 27TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

16373-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) V. JAY ZEE FOOD PRODUCTS LIMITED CARRYING ON
BUSINESS AS HOME JUICE CO., (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. BUCHANAN, D. COLLINS FOR THE
APPLICANT; M. BURGARD FOR THE RESPONDENT; RONALD JAMES ROGERS,
DOUGLAS GERALD BOLGER, JERRY JOSEPH ALLEN, JOHN P. TETERA,
MARK CARROLL FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JULY 29, 1969.

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3. IN THIS CASE STATEMENTS OF DESIRE WERE FILED BY A NUMBER
OF EMPLOYEES. AT THE HEARING THE EMPLOYEES ADVISED THE BOARD THAT
THE STATEMENTS OF DESIRE WERE THE RESULT OF INDIVIDUAL EFFORTS.
ACCORDINGLY, ONLY THOSE STATEMENTS OF DESIRE THAT AFFECTED THE
MEMBERSHIP EVIDENCE WERE DEALT WITH. SOME OF THE EMPLOYEES TESTI-
FIED THAT THEY WERE APPROACHED BY MR. JAMAIL AND MR. HADDAD WHO
REPRESENTED THE EMPLOYER AND ARE MEMBERS OF MANAGEMENT, AND RE-
QUESTED TO PREPARE A LETTER IN OPPOSITION TO THE UNION. ONE OF
THE EMPLOYEES ADVISED THE BOARD THAT HE HAD BEEN INTERROGATED ABOUT
THE UNION ON SEVERAL OCCASIONS. THE LETTERS WERE PREPARED BY THE
EMPLOYEES WITH WORDING SUGGESTED BY EITHER MR. HADDAD OR MR. JAMAIL.
WHEN EMPLOYEES WROTE THE LETTERS THEY GAVE THEM EITHER TO MR. HADDAD
OR MR. JAMAIL FOR THE PURPOSE OF FORWARDING THEM TO THE BOARD. THESE
LETTERS ARE THE STATEMENTS OF DESIRE.

4. IT IS CLEAR THAT MANAGEMENT HAS SUPPORTED, INFLUENCED,
INSTIGATED AND PARTICIPATED IN THE PREPARATION AND CIRCULATION OF
THESE STATEMENTS OF DESIRE AND, ACCORDINGLY, THE STATEMENTS OF
DESIRE ARE NOT ACCEPTABLE AS DEROGATING FROM THE EVIDENCE OF MEMBER-
SHIP FILED BY THE APPLICANT. SEE MILK AND BREAD DRIVERS, DAIRY
EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647,
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA V. PARNELL
VENDING LIMITED 1965 APRIL OLRB MTHLY. REP. 5 AT 8, 9; CANADIAN
UNION OF OPERATING ENGINEERS, LOCAL 101 V. NEW SURPASS PETRO-
CHEMICALS LIMITED V. GROUP OF EMPLOYEES 1966 MARCH OLRB MTHLY. REP.
892. UNITED STEELWORKERS OF AMERICA V. SAPAWA GOLD MINES LIMITED
1964 DEC. OLRB MTHLY. REP. 451; SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL UNION 47 V. ALEXANDER METAL PRODUCTS Co. LTD.
1964 APRIL OLRB MTHLY. REP. 8; UNITED RUBBER, CORK, LINOLEUM &
PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC V. FLECK MANUFACTURING
LIMITED 62 CLLC 1046, CLS 76-860 (OLRB).

5. OF GREATER CONSEQUENCE, IS THE FACT THAT ONE OF THE EMPLOYEES DELIBERATELY ATTEMPTED TO DECEIVE THE BOARD IN HIS TESTIMONY. WHEN HE WAS CONFRONTED WITH THE INCONSISTENCIES OF HIS TESTIMONY HE ADMITTED TO THE BOARD THAT PART OF HIS TESTIMONY HAD BEEN FABRICATED.

6. WHILE THE CONDUCT REFERRED TO VIOLATED THE UNFAIR PRACTICE PROVISIONS OF THE LABOUR RELATIONS ACT AND THE PERSONS INVOLVED COULD BE PROSECUTED PURSUANT TO THE SUMMARY CONVICTION PROVISIONS OF THE CRIMINAL CODE, WE ARE OF THE OPINION THAT WE SHOULD INDICATE TO PARTIES APPEARING BEFORE THIS BOARD THAT PERSONS FALSELY TESTIFYING AND PARTIES TO THAT FALSE TESTIMONY MAY ALSO BE SUBJECT TO OTHER PROVISIONS OF THE CRIMINAL CODE. THE CRIMINAL CODE PROVIDES:

PERJURY

SECTION 112. "EVERY ONE COMMITS PERJURY WHO, BEING A WITNESS IN A JUDICIAL PROCEEDING, WITH INTENT TO MISLEAD GIVES FALSE EVIDENCE, KNOWING THAT THE EVIDENCE IS FALSE."

PUNISHMENT FOR PERJURY

SECTION 113.(1) "EVERY ONE WHO COMMITS PERJURY IS GUILTY OF AN INDICTABLE OFFENCE AND IS LIABLE TO IMPRISONMENT FOR FOURTEEN YEARS, BUT IF HE COMMITS PERJURY TO PROCURE THE CONVICTION OF A PERSON FOR AN OFFENCE PUNISHABLE BY DEATH, HE IS LIABLE TO IMPRISONMENT FOR LIFE."

(2) "WHERE A PERSON IS CHARGED WITH AN OFFENCE UNDER SECTION 112 OR 116, A CERTIFICATE SPECIFYING WITH REASONABLE PARTICULARITY THE PROCEEDING IN WHICH THAT PERSON IS ALLEGED TO HAVE GIVEN THE EVIDENCE IN RESPECT OF WHICH THE OFFENCE IS CHARGED, IS PRIMA FACIE EVIDENCE THAT IT WAS GIVEN IN A JUDICIAL PROCEEDING, WITHOUT PROOF OF THE SIGNATURE OR OFFICIAL CHARACTER OF THE PERSON BY WHOM THE CERTIFICATE PURPORTS TO BE SIGNED IF IT PURPORTS TO BE SIGNED BY THE CLERK OF THE COURT OR OTHER OFFICIAL HAVING THE CUSTODY OF THE RECORD OF THAT PROCEEDING OR BY HIS LAWFUL DEPUTY."

FALSE STATEMENTS IN EXTRA-JUDICIAL PROCEEDINGS.

SECTION 114. "EVERY ONE WHO, NOT BEING A WITNESS IN A JUDICIAL PROCEEDING BUT BEING PERMITTED, AUTHORISED OR REQUIRED BY LAW TO MAKE A STATEMENT BY AFFIDAVIT, BY SOLEMN DECLARATION OR ORALLY UNDER OATH, MAKES IN SUCH A STATEMENT, BEFORE A PERSON WHO IS AUTHORISED BY LAW TO PERMIT IT TO BE MADE BEFORE HIM, AN ASSERTION WITH RESPECT TO A MATTER OF FACT, OPINION, BELIEF OR KNOWLEDGE, KNOWING THAT THE ASSERTION IS FALSE, IS GUILTY OF AN INDICTABLE OFFENCE AND IS LIABLE TO IMPRISONMENT FOR FOURTEEN YEARS."

PARTIES TO OFFENCE. - COMMON INTENTION.

SECTION 21. "(1) EVERY ONE IS A PARTY TO AN OFFENCE WHO

- (A) ACTUALLY COMMITS IT,
- (B) DOES OR OMITS TO DO ANYTHING FOR THE PURPOSE OF AIDING ANY PERSON TO COMMIT IT, OR
- (C) ABETS ANY PERSON IN COMMITTING IT.

(2) WHERE TWO OR MORE PERSONS FORM AN INTENTION IN COMMON TO CARRY OUT AN UNLAWFUL PURPOSE AND TO ASSIST EACH OTHER THEREIN AND ANY ONE OF THEM, IN CARRYING OUT THE COMMON PURPOSE, COMMITS AN OFFENCE, EACH OF THEM WHO KNEW OR OUGHT TO HAVE KNOWN THAT THE COMMISSION OF THE OFFENCE WOULD BE A PROBABLE CONSEQUENCE OF CARRYING OUT THE COMMON PURPOSE IS A PARTY TO THAT OFFENCE."

PERSON COUNSELLING OFFENCE.

SECTION 22. "(1) WHERE A PERSON COUNSELS OR PROCURES ANOTHER PERSON TO BE A PARTY TO AN OFFENCE AND THAT OTHER PERSON IS AFTERWARDS A PARTY TO THAT OFFENCE, THE PERSON WHO COUNSELLED OR PROCURED IS A PARTY TO THAT OFFENCE, NOTWITHSTANDING THAT THE OFFENCE WAS COMMITTED IN A WAY DIFFERENT FROM THAT WHICH WAS COUNSELLED OR PROCURED.

(2) EVERY ONE WHO COUNSELS OR PROCURES ANOTHER PERSON TO BE A PARTY TO AN OFFENCE IS A PARTY TO EVERY OFFENCE THAT THE OTHER COMMITS IN CONSEQUENCE OF THE COUNSELLING OR PROCURING THAT THE PERSON WHO COUNSELLED OR PROCURED KNEW OR OUGHT TO HAVE KNOWN WAS LIKELY TO BE COMMITTED IN CONSEQUENCE OF THE COUNSELLING OR PROCURING."

7. THE BOARD WISHES TO INDICATE IN VERY STRONG TERMS THAT IT DISAPPROVES OF CONDUCT OF THIS NATURE AND WILL NOT TOLERATE FABRICATED TESTIMONY. SHOULD A SIMILAR SITUATION ARISE IT MAY RESULT IN THE BOARD REFERRING THE MATTER TO THE APPROPRIATE AUTHORITIES.

8. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON, ONTARIO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME

THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 8TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16381-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GATEWAY DELIVERY SYSTEMS OF NORTH BAY LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: W. W. TILLER FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, MURRAY ALLEN CARVER FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
P. J. O'KEEFFE: JULY 24, 1969.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WAS FILED IN THIS MATTER 8 INDIVIDUAL LETTERS SIGNED BY EMPLOYEES OF THE RESPONDENT OF WHOM THE APPLICANT CLAIMED 4 AS MEMBERS. MR. CARVER, ONE OF THE RESPONDENT'S EMPLOYEES, ATTENDED AT THE HEARING AND TESTIFIED THAT HE HAD WRITTEN HIS LETTER OF OPPOSITION WHICH HE ENCLOSED IN A SMALL ENVELOPE. THE OTHER 7 EMPLOYEES WHO HAD SIGNED LETTERS HAD GIVEN MR. CARVER A SEALED ENVELOPE WHICH AT THE TIME HE ASSUMED CONTAINED A LETTER OF OPPOSITION. MR. CARVER ENCLOSED ALL 8 ENVELOPES IN A LARGE BROWN ENVELOPE AND MAILED THE MATERIAL TO THE BOARD. MR. CARVER WAS NOT PRESENT WHEN ANY OF THE OTHER 7 DOCUMENTS WERE PREPARED OR SIGNED. HE ACKNOWLEDGED THAT HE HAD NO INFORMATION CONCERNING ALL THE CIRCUMSTANCES PERTAINING TO THE ORIGINATION OF THE DOCUMENTS OR THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED ON THE 7 DOCUMENTS. WHILE MR. CARVER TESTIFIED THAT HE HAD NO CONTACT WITH MEMBERS OF MANAGEMENT AND WHILE THE BOARD IS PREPARED TO ACCEPT HIS STATEMENT OF DESIRE AS A FREE INDICATION OF HIS TRUE WISHES, MR. CARVER WAS UNABLE TO ASSIST THE BOARD WITH RESPECT TO THE OTHER 7 DOCUMENTS IN THIS REGARD. IN VIEW OF THE LACK OF

EVIDENCE CONCERNING THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND SIGNING OF THE OTHER 7 LETTERS WHICH WERE FORWARDED BY MR. CARVER, THE BOARD IS NOT PREPARED TO HOLD THAT THE OTHER 7 DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE SO AS TO NECESSITATE THE TAKING OF A REPRESENTATION VOTE.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 9TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: JULY 24, 1969.

1. I DISSENT.

2. I AM OF THE OPINION THAT 7 OF THE 8 INDIVIDUAL LETTERS EXPRESSING OBJECTION TO THE APPLICATION SHOULD BE GIVEN WEIGHT BY THE BOARD.

3. THE SIGNATURES OF THOSE WHO SIGNED ALL OF THE LETTERS OF OBJECTION TO THE APPLICATION ALL APPEARED TO MATCH THOSE SPECIMEN SIGNATURES THAT HAD BEEN FILED WITH THE BOARD BY THE RESPONDENT. ONE OF THE 8 INDIVIDUAL LETTERS WAS SIGNED BY MR. CARVER AND ALL BUT ONE OF THE LETTERS OF OBJECTION APPEARED TO HAVE BEEN SIGNED BY THE SAME PERSON WHO WROTE THE BODY OF THE LETTER.

4. ALL OF THE LETTERS OF OBJECTION WERE WORDED DIFFERENTLY AND DID NOT INDICATE ANY COMMON DIRECTION OR INFLUENCE.

5. ALL OF THE EVIDENCE WOULD INDICATE THAT THERE HAD BEEN A COMMON UNDERSTANDING AMONGST THOSE WRITING THE INDIVIDUAL LETTERS OF OBJECTION THAT SUCH OBJECTIONS SHOULD BE FILED AND A REASONABLE INFERENCE CAN BE DRAWN THAT MR. CARVER WAS TO REPRESENT THEM AT THE HEARING OF THE BOARD.

6. THERE WAS NO EVIDENCE TO INDICATE THAT THE EMPLOYER IN ANY WAY INFLUENCED THE EMPLOYEES.

7. WHILE MORE EVIDENCE SHOULD HAVE BEEN AVAILABLE TO THE BOARD AS TO THE ORIGINATION OF THE STATEMENTS OF DESIRE I DO NOT

BELIEVE, IN THE LIGHT OF ALL OF THE EVIDENCE THAT WAS SUBMITTED, THAT THIS LACK OF EVIDENCE IN THIS CASE SHOULD BE FATAL TO THE BOARD GIVING WEIGHT TO THE INDIVIDUAL STATEMENTS OF DESIRE.

8. I WOULD HAVE ACCEPTED THE INDIVIDUAL STATEMENTS OF DESIRE IN THIS CASE AS CASTING DOUBT ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT AND ACCORDINGLY I WOULD HAVE ORDERED THAT A REPRESENTATION VOTE BE TAKEN AMONGST THE EMPLOYEES.

16390-69-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C. (APPLICANT) V. BRANTFORD BUILDERS' SUPPLIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. SACK AND D. BURSHAW FOR THE APPLICANT, DONALD J.M. BROWN FOR THE RESPONDENT, WALTER HARRY HOCKLEY ON BEHALF OF HIMSELF.

DECISION OF THE BOARD: JULY 24, 1969.

1. BY WAY OF PRELIMINARY OBJECTION THE RESPONDENT CHALLENGED THE APPLICANT'S STATUS TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT IN THIS MATTER. THE BASIS OF THE RESPONDENT'S OBJECTION WAS THAT THE BY-LAWS GOVERNING MEMBERSHIP CONTAINED IN ARTICLE 17 OF THE APPLICANT'S CONSTITUTION WERE SUCH THAT THE BOARD SHOULD FIND THAT THE APPLICANT'S CONSTITUTION WAS INCONSISTENT WITH THE PURPOSES OF THE LABOUR RELATIONS ACT. THE RELEVANT PROVISIONS OF THE APPLICANT'S CONSTITUTION READ AS FOLLOWS:

ARTICLE 17 - BY-LAWS TO GOVERN MEMBERSHIP

SECTION 1 - ADMISSION OF MEMBERS

ANY PERSON ACTUALLY EMPLOYED IN ANY BRANCH OF THE JURISDICTION OF THE INTERNATIONAL UNION DESIRING TO BECOME A MEMBER SHALL FILE HIS APPLICATION UPON AN OFFICIAL APPLICATION BLANK SUPPLIED BY THE INTERNATIONAL SECRETARY-TREASURER WITH AN AFFILIATED LOCAL UNION LOCATED IN THE TERRITORY IN WHICH HE IS EMPLOYED.

ALL APPLICATIONS MUST BEAR THE SOCIAL SECURITY NUMBER OF THE APPLICANT.

THE PRESIDENT OF THE LOCAL UNION RECEIVING SUCH APPLICATION SHALL APPOINT AN INVESTIGATING COMMITTEE WHO SHALL EXAMINE THE ELIGIBILITY OF THE CANDIDATE PROPOSED FOR MEMBERSHIP AND REPORT THE RESULTS OF ITS EXAMINATION. IF ITS REPORT IS FAVORABLE THE MEMBERS OF THE COMMITTEE SHALL AFFIX THEIR SIGNATURES TO THE APPLICATION. ALL APPLICATIONS FOR MEMBERSHIP MUST BE VOTED UPON BY THE LOCAL UNION AT THE FIRST REGULAR MEETING FOLLOWING THE DATE OF APPLICATION.

ALL APPLICANTS ACCEPTED TO MEMBERSHIP SHALL BE OBLIGATED ACCORDING TO THE INITIATION CEREMONY CONTAINED IN THE OFFICIAL RITUAL OF THE INTERNATIONAL UNION.

WHEN OBJECTION IS RAISED BY MEMBERS OF A LOCAL UNION TO THE ADMISSION OF A CANDIDATE, THE MATTER SHALL BE REFERRED TO THE LOCAL UNION'S EXECUTIVE BOARD FOR INVESTIGATION, AND WHEN THE REPORT OF THE EXECUTIVE BOARD IS SUBMITTED TO A MEETING OF THE LOCAL UNION IT SHALL REQUIRE A MAJORITY OF THE VOTES CAST BY THE MEMBERS PRESENT AT SUCH MEETINGS TO CONCUR IN THE RECOMMENDATION OF THE EXECUTIVE BOARD.

IF THE APPLICANT IS REJECTED BY A MAJORITY VOTE OF THE LOCAL UNION, HIS INITIATION FEE SHALL BE RETURNED. ...

2. THE RESPONDENT ARGUED THAT THE ABOVE PROVISIONS PERMIT A MAJORITY OF THE MEMBERS OF THE LOCAL OF THE INTERNATIONAL TO REJECT AN APPLICATION FOR MEMBERSHIP. IT WAS THE RESPONDENT'S POSITION THAT A PROSPECTIVE MEMBER IS REQUIRED TO ENTER INTO A "POPULARITY CONTEST". SUCH REQUIREMENT WOULD BE REPUGNANT AND INCONSISTENT WITH THE RESPONDENT'S CONCEPT OF AN INDUSTRIAL DEMOCRACY WHICH SHOULD, IN THE RESPONDENT'S VIEW, ENABLE ALL EMPLOYEES IN THE BARGAINING UNIT TO PARTICIPATE IN ALL PHASES OF THE ACTIVITIES OF THE BARGAINING AGENT. IF THE MEMBERS OF THE APPLICANT UNION COULD REJECT THE MEMBERSHIP APPLICATION OF OTHER EMPLOYEES ON ANY CONCEIVABLE WHIM, THIS PROCEDURE WOULD BE INCONSISTENT WITH THE PROVISIONS OF SECTIONS 1(1)(J) AND 7(3) OF THE LABOUR RELATIONS ACT, IN THE APPLICANT'S VIEW.

3. THE APPLICANT'S CONSTITUTION ALSO CONTAINS THE FOLLOWING PROVISION:

ARTICLE 2 - SECTION 2

REGARDLESS OF CREED, COLOR, NATIONALITY, AGE OR SEX, EVERY WORKER EMPLOYED IN AND AROUND CEMENT, LIME, GYPSUM AND ALLIED INDUSTRY PLANTS MUST BE UNITED INTO AND BECOME

AN INTEGRAL PART OF THIS INTERNATIONAL UNION. TO THIS END WE PROPOSE TO EDUCATE OUR MEMBERS AGAINST ANY FORM OF DISCRIMINATION.

4. DONALD BURSHAW TESTIFIED THAT HE WAS THE APPLICANT'S FIRST DISTRICT REPRESENTATIVE WHICH POSITION HE HAS HELD SINCE 1962 AND THAT THERE WERE 55 LOCALS OF THE APPLICANT IN THE DISTRICT WITHIN HIS JURISDICTION. HE TESTIFIED THAT HE HAD BEEN A MEMBER OF THE APPLICANT FOR 21 YEARS DURING WHICH PERIOD HE WAS PRESIDENT OF LOCAL 219 OF THE APPLICANT FOR A PERIOD OF 7 YEARS. MR. BURSHAW FURTHER TESTIFIED CONCERNING THE APPLICANT'S PRACTICE OF ADMITTING PERSONS INTO MEMBERSHIP AND IN HIS EXPERIENCE THE APPLICANT HAD NEVER REJECTED A PERSON'S APPLICATION FOR MEMBERSHIP PURSUANT TO THE PROVISIONS OF ARTICLE 17 OF THE APPLICANT'S CONSTITUTION.

5. THERE IS NO EVIDENCE BEFORE THE BOARD THAT ANY OF THE RESPONDENT'S EMPLOYEES' APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT UNION HAD BEEN REJECTED. WHILE THE MEMBERSHIP DOCUMENTS SUBMITTED BY THE APPLICANT WERE SIGNED ON VARIOUS DATES ALL OF THE MEMBERSHIP DOCUMENTS CONTAINED THE ENDORSEMENT THAT THEY WERE "ACCEPTED" BY THE APPLICANT ON JUNE 25TH, 1969.

6. WHILE THE PROVISIONS OF ARTICLE 17 OF THE APPLICANT'S CONSTITUTION MAY BE OPEN TO ABUSE, IF THESE PROVISIONS ARE APPLIED TO REJECT PERSONS WHO ARE KNOWN TO BE RACKETEERS, ETC., THEN THE REQUIREMENT THAT A MAJORITY OF THE MEMBERS OF THE LOCAL REJECT THE MEMBERSHIP APPLICATION OF SUCH UNWANTED PERSONS WOULD APPEAR TO BE A VERY DEMOCRATIC PROCEDURE. HOWEVER THAT MAY BE, THERE IS NO EVIDENCE BEFORE THE BOARD THAT ANY OF THE RESPONDENT'S EMPLOYEES' APPLICATION FOR MEMBERSHIP WERE REJECTED PURSUANT TO THE PROVISIONS OF ARTICLE 17 OF THE CONSTITUTION. IF IN THE FUTURE ANY EMPLOYEE OF THE RESPONDENT IS PROHIBITED FROM BECOMING A MEMBER OF THE APPLICANT AND THE RESPONDENT REFUSES TO BARGAIN ON BEHALF OF SUCH PERSON, THEN AT THAT TIME A COMPLAINT MAY BE JUSTIFIED THAT THE UNION HAS REFUSED TO ACT AS THE SOLE COLLECTIVE BARGAINING AGENT AS CONTEMPLATED BY SECTION 7(3) OF THE ACT.

7. SECTION 35(2) OF THE ACT READS AS FOLLOWS:

NO EMPLOYER SHALL DISCHARGE AN EMPLOYEE,

- (A) WHO HAS BEEN EXPELLED OR SUSPENDED FROM MEMBERSHIP IN THE TRADE UNION MENTIONED IN CLAUSE A FO SUBSECTION 1; OR
- (B) TO OR FROM WHOM MEMBERSHIP IN THE TRADE UNION MENTIONED IN CLAUSE A OF SUBSECTION 1 HAS BEEN DENIED OR WITHHELD,

BECAUSE HE WAS OR IS A MEMBER IN ANOTHER TRADE UNION OR HAS ENGAGED IN ACTIVITY AGAINST THE TRADE UNION MENTIONED IN CLAUSE A OF SUBSECTION 1 OR ON BEHALF OF ANOTHER TRADE UNION.

THIS SECTION CONTEMPLATES THAT CERTAIN EMPLOYEES IN A BARGAINING UNIT MAY BE DENIED MEMBERSHIP IN A UNION FOR SPECIFIC CAUSES, HOWEVER, THIS SECTION ALSO CONTEMPLATES THAT THE UNION MUST CONTINUE TO ACT AS THE BARGAINING AGENT FOR SUCH PERSONS. IN THE ABSENCE OF EVIDENCE THAT THE APPLICANT IN THIS CASE DENIED MEMBERSHIP TO ANY OF THE RESPONDENT'S EMPLOYEES IN THE BARGAINING UNIT, ANY COMPLAINT WITH RESPECT TO THE POSSIBILITY OF WRONGFULLY RESTRICTING MEMBERSHIP UNDER ARTICLE 17 OF THE APPLICANT'S CONSTITUTION IS PREMATURE.

8. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

9. MR. HOCKLEY, AN EMPLOYEE OF THE RESPONDENT, ATTENDED AT THE HEARING AND ATTEMPTED AT THAT TIME TO FILE A DOCUMENT CONTAINING THE NAMES OF CERTAIN EMPLOYEES OF THE RESPONDENT WHO WERE OPPOSED TO THE APPLICATION OF THE APPLICANT IN THIS MATTER. THE BOARD REFUSED TO ACCEPT THE DOCUMENT AT THE HEARING BECAUSE IT WAS NOT FILED WITHIN THE TIME REQUIRED UNDER SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. THERE HAD BEEN NO PREVIOUS ATTEMPT TO FILE THE PETITION BY MR. HOCKLEY OR ANY OTHER EMPLOYEES OF THE RESPONDENT. MR. HOCKLEY ASKED FOR AN ADJOURNMENT ON THE GROUNDS THAT ADDITIONAL EMPLOYEES OF THE RESPONDENT HAD INDICATED THAT THEY MAY ALSO WISH TO OPPOSE THE APPLICATION. MR. HOCKLEY'S REQUEST WAS ALSO SET FORTH IN A LETTER DATED JULY 15TH, FROM THE FIRM OF SOLICITORS RETAINED BY MR. HOCKLEY, WHICH WAS RECEIVED BY THE BOARD DURING THE COURSE OF THE HEARING IN THIS MATTER. THIS LETTER REPEATED MR. HOCKLEY'S REQUEST FOR AN ADJOURNMENT "SO THAT FURTHER INFORMATION COULD BE PRESENTED AND AN INVESTIGATION MADE INTO THE CONDUCT OF THE UNION ATTEMPTING CERTIFICATION." WHILE MR. HOCKLEY AND HIS SOLICITORS SUGGESTED "THAT SEVERAL EMPLOYEES APPEARED TO HAVE BEEN INTIMIDATED AS THEY WOULD HAVE LIKED TO ALSO SIGN THE NOTICE OF OPPOSITION BUT FEARED TO DO SO," MR. HOCKLEY INDICATED THAT THE FEAR REFERRED TO WAS CAUSED BY THE FACT THAT "TWO OF THE BIGGEST FELLOWS IN THE SHOP ARE RUNNING THE UNION'S ORGANIZING CAMPAIGN." IT WAS SUGGESTED THAT BECAUSE OF THEIR SIZE EMPLOYEES WOULD BE HESITANT TO OPPOSE THE UNION'S ATTEMPT TO BECOME BARGAINING AGENT. IT SHOULD BE NOTED, HOWEVER, THAT THERE WERE NO SPECIFIC CHARGES OF IMPROPER CONDUCT MADE AGAINST THE APPLICANT UNION AND NO PARTICULARS WERE PROVIDED OF IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON AS REQUIRED BY SECTION 47 OF THE BOARD'S RULES OF PROCEDURE.

10. Mr. HOCKLEY STATED THAT HE DID NOT ATTEMPT TO FILE HIS STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION PRIOR TO THE TERMINAL DATE IN THIS MATTER BECAUSE HE WAS ON HIS ANNUAL VACATION AT THE TIME THE NOTICE TO THE EMPLOYEES WAS INITIALLY POSTED. ALTHOUGH HE RETURNED TO WORK ON JULY 7TH HE ALLEGED THAT HE DID NOT HAVE SUFFICIENT OPPORTUNITY TO CIRCULATE A DOCUMENT IN OPPOSITION TO THIS APPLICATION PRIOR TO JULY 9TH, THE TERMINAL DATE IN THIS MATTER, DUE TO THE FACT THAT FOR PART OF THIS TIME HE WAS ABSENT FROM THE RESPONDENT'S PLANT IN THE PERFORMANCE OF HIS WORK AS A TRUCK DRIVER. Mr. HOCKLEY ARGUED THAT HE WISHED TO HAVE A FURTHER OPPORTUNITY TO ATTEMPT TO GAIN SUPPORT FOR HIS OPPOSITION TO THE UNION BECAUSE "IT WAS COMMON KNOWLEDGE THAT THE COMPANY WILL LEASE OUT ITS TRUCKING OPERATIONS IF THE UNION COMES IN" AND HE WOULD THEREFORE LOSE HIS JOB AS A TRUCK DRIVER FOR THE RESPONDENT.

11. NOTICE OF THIS APPLICATION, FORM 5, WAS POSTED ON THE COMPANY'S PREMISES ON JULY 2ND, 1969, WHICH WAS WITHIN THE TIME REQUIRED UNDER THE PROVISIONS OF SECTION 2 AND SECTION 4 OF THE BOARD'S RULES OF PROCEDURE. WHILE Mr. HOCKLEY WAS ABSENT ON HIS ANNUAL VACATION DURING A PORTION OF THE TIME THAT THE NOTICE WAS POSTED ON THE BULLETIN BOARD, HE DID IN FACT HAVE THREE DAYS ACTUAL NOTICE OF THE APPLICATION DURING WHICH TIME HE COULD HAVE FILED A STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION. THIS Mr. HOCKLEY DID NOT ATTEMPT TO DO. WHILE THE BOARD'S RULES REQUIRE THAT A NOTICE OF THE APPLICATION BE POSTED FOR A CERTAIN PERIOD OF TIME IN ORDER TO AFFORD EMPLOYEES AN OPPORTUNITY TO EXPRESS THEIR OPPOSITION TO THE APPLICATION, THERE IS NOTHING IN THE BOARD'S RULES WHICH WOULD REQUIRE THAT THE TIME PERMITTED FOR FILING OBJECTIONS TO AN APPLICATION BE SUFFICIENT TO ALLOW AN EMPLOYEE TO CANVASS THE WISHES OF ALL OTHER EMPLOYEES IN THE BARGAINING UNIT. IN THIS PROVINCE THERE ARE BARGAINING UNITS WHICH INCLUDE SEVERAL THOUSAND EMPLOYEES AND IF AN EMPLOYEE IS PRESUMED TO HAVE THE RIGHT TO CANVASS THE WISHES OF OTHER EMPLOYEES IN THE BARGAINING UNIT THEN THE TIME BETWEEN THE DATE OF APPLICATION AND THE TERMINAL DATE WOULD HAVE TO EXTEND OVER SEVERAL MONTHS TO PERMIT AN EMPLOYEE TO MAKE SUCH A CANVASS. SECTION 2 OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT "THE REGISTRAR SHALL FIX A TERMINAL DATE FOR THE APPLICATION WHICH SHALL BE NOT LESS THAN FIVE AND NOT MORE THAN TEN DAYS...." IT IS READILY APPARENT THAT THE TIME LIMITATIONS REFERRED TO ABOVE ARE ONLY INTENDED TO PROVIDE THE EMPLOYEES WHO ARE AT WORK WITH A REASONABLE OPPORTUNITY TO EXPRESS THEIR OPPOSITION TO THE APPLICATION. IT WOULD BE A RARE SITUATION INDEED, WHERE AN APPLICATION IS MADE DURING THE MONTHS OF JULY AND AUGUST, THAT SOME OF THE EMPLOYEES OF AN EMPLOYER WOULD NOT BE ABSENT ON THEIR ANNUAL VACATION. IT IS

THEREFORE TO BE ANTICIPATED THAT THE EMPLOYEES WHO ARE ON THEIR ANNUAL VACATION MAY NOT HAVE AN OPPORTUNITY TO INSPECT THE NOTICE TO EMPLOYEES, FORM 5, WHICH IS POSTED ON AN APPLICATION FOR CERTIFICATION. IN VIEW OF THE FACT THAT IT IS COMMON KNOWLEDGE THAT ANNUAL VACATIONS EXTEND ANYWHERE FROM ONE TO FOUR WEEKS, DEPENDING ON THE LENGTH OF SERVICE, THAT A MAXIMUM PERIOD OF TEN DAYS, REFERRED TO IN SECTION 2 OF THE BOARD'S RULES OF PROCEDURE, MAY EFFECTIVELY PROHIBIT SUCH VACATIONING EMPLOYEES FROM HAVING AN OPPORTUNITY TO INSPECT THE PROVISIONS OF FORM 5 AFTER IT HAD BEEN POSTED. IF IT WERE OTHERWISE AND IF EACH AND EVERY EMPLOYEE IN THE BARGAINING UNIT MUST HAVE AN OPPORTUNITY TO INSPECT THE PROVISIONS OF FORM 5 AFTER IT HAS BEEN POSTED, EVEN WHERE THE EMPLOYEES ARE ABSENT ON VACATION OR THROUGH SICKNESS, SUCH PROVISIONS WOULD EFFECTIVELY PREVENT THE BOARD FROM PROCEEDING WITH APPLICATIONS FOR CERTIFICATION DURING THE SUMMER MONTHS. IN MANY INDUSTRIES WHERE VACATIONS ARE STAGGERED THROUGHOUT THE YEAR SUCH PROVISIONS WOULD UNDULY DELAY THE PROCESSING OF APPLICATIONS FOR CERTIFICATION FOR MONTHS AT A TIME,

12. IT IS RECOGNIZED, OF COURSE, THAT WHERE THERE IS NOT A REPRESENTATIVE NUMBER OF EMPLOYEES AT WORK DURING THE TIME THAT NOTICE OF THE APPLICATION (FORM 5) HAS BEEN POSTED, THE TIME FOR FILING STATEMENTS OF OBJECTIONS WOULD HAVE TO BE EXTENDED. IF, FOR EXAMPLE, 50 PER CENT OF THE EMPLOYEES WERE ABSENT ON VACATION DURING THE TIME THAT THE NOTICE OF APPLICATION WAS POSTED, IT WOULD BE REASONABLE TO EXTEND THE TERMINAL DATE SO THAT A REPRESENTATIVE NUMBER OF EMPLOYEES WOULD RECEIVE NOTICE OF THE APPLICATION. IN THE INSTANT CASE, HOWEVER, MR. HOCKLEY AND TWO OTHER EMPLOYEES OUT OF A TOTAL OF 33 WERE APPARENTLY ABSENT DURING PART OF THE TIME WHEN THE NOTICE WAS POSTED. SUCH NUMBER WOULD NOT CAUSE THE BOARD TO FIND THAT A REPRESENTATIVE NUMBER OF EMPLOYEES WERE ABSENT FROM WORK DURING THE PERIOD IN QUESTION. IN ALL THE ABOVE CIRCUMSTANCES, THE BOARD IS THEREFORE NOT PREPARED TO EXTEND THE TERMINAL DATE TO AFFORD MR. HOCKLEY THE OPPORTUNITY THAT HE REQUESTS IN THIS MATTER. THE REQUEST OF MR. HOCKLEY IS THEREFORE DENIED.

13. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 9TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE

BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16395-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
THE METROPOLITAN TORONTO LIBRARY BOARD (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. A. ACTON FOR THE APPLICANT,
R. M. PARKER AND J. T. PARKHILL FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 23, 1969.

. . .

2. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT. IT APPEARS THAT CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1003 WAS A PARTY TO A COLLECTIVE AGREEMENT COVERING THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED WHEN THEY WERE EMPLOYED BY THE TORONTO PUBLIC LIBRARY BOARD. AS OF JULY 1ST, 1969, THE RESPONDENT IN THIS MATTER TOOK OVER THE OPERATION OF THE CENTRAL LIBRARY AND THE FILM LIBRARY WHICH HAD BEEN FORMERLY OPERATED BY THE TORONTO PUBLIC LIBRARY BOARD. THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED WERE INCLUDED IN THE BARGAINING UNIT FORMERLY REPRESENTED BY LOCAL 1003. SINCE IT APPEARS THAT THE RESPONDENT IN THIS MATTER IS THE SUCCESSOR EMPLOYER OF THE TORONTO PUBLIC LIBRARY BOARD WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT, LOCAL 1003 CONTINUES AS THE BARGAINING AGENT OF THE ABOVE EMPLOYEES AND IS ENTITLED TO GIVE NOTICE TO BARGAIN WITH RESPECT TO THESE EMPLOYEES.

3. IN THESE CIRCUMSTANCES, THE INSTANT APPLICATION IS UNTIMELY AND IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - TERMINATION

16259-69-R: CLIVE DYKER (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 (RESPONDENT).

(RE: EAST MALL, I.G.A.)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: CLIVE R. DYKER AND PIERRE GENEST,
Q.C., FOR THE APPLICANT; CLIFFORD EVANS FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 9, 1969.

1. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF EAST MALL, I.G.A. IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JUNE 13, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

2. BY WAY OF REPLY TO THE BOARD'S REQUEST FOR SPECIMEN SIGNATURES, THE EMPLOYER APPARENTLY MADE USE OF THE BLANK COPY OF THE PETITION FORWARDED TO HIM BY THE BOARD AFTER RECEIPT OF THE PETITION. THE EVIDENCE IS THAT HE HAD THE EMPLOYEES SIGN THE DOCUMENT IN THE STORE. IT IS ENDORSED WITH THE USUAL DECLARATION WITH RESPECT TO PREPARATION AND THE CONFIRMATION OF ACCURACY AS REQUIRED AND IS SIGNED BY THE EMPLOYER. IT WAS RECEIVED BY THE BOARD ON JUNE 18, 1969. THE APPLICATION AND PETITION IN SUPPORT WERE FILED ON JUNE 5TH, 1969. THE SIGNING OF THIS DOCUMENT AT THE TIME AND IN THE CIRCUMSTANCES REFERRED TO COULD THEREFORE HAVE HAD NO BEARING UPON THE VOLUNTARY NATURE OF THE PETITION. WE ARE ALSO OF THE OPINION THAT

IN THE CIRCUMSTANCES THE SIGNING OF THE SECOND DOCUMENT WOULD NOT, CONTRARY TO THE ARGUMENT OF THE RESPONDENT, SO INFLUENCE THE EMPLOYEES AS TO SERIOUSLY IMPAIR THEIR FREEDOM OF EXPRESSION IN A REPRESENTATION VOTE.

3. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF EAST MALL, I.G.A. THOSE ELIGIBLE TO VOTE ARE ALL RETAIL EMPLOYEES OF EAST MALL, I.G.A., SAVE AND EXCEPT FOR THE STORE MANAGER, ASSISTANT STORE MANAGER IN STORE WHOSE WEEKLY VOLUME IS \$15,000. OR GREATER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 (TWENTY-FOUR) HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

4. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

5. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - STRIKE UNLAWFUL

WRITTEN REASONS

16214-69-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V.
NICHOLAS ZACOTA ET AL (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF BOARD MEMBER E. BOYER: JULY 10, 1969.

1. I DISSENT FROM THE DECISION OF THE MAJORITY DATED JUNE 16, 1969. THE APPLICANT AND LOCAL 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WERE BOUND BY A COLLECTIVE AGREEMENT MADE ON JULY 22, 1965. THE CONDUCT TO WHICH THE APPLICANT OBJECTS OCCURRED AFTER THE EXPIRY DATE OF THE COLLECTIVE AGREEMENT, BUT BEFORE THE EXPIRATION OF THE TIME PERIODS SET OUT IN SECTION 54(2) OF THE LABOUR RELATIONS ACT.

2. ARTICLE 15 OF THE COLLECTIVE AGREEMENT PROVIDES FOR A PRIVATE METHOD OF SETTLING JURISDICTIONAL DISPUTES. ARTICLE 15.6 PROVIDES:

15.6 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY EITHER EXPRESSED OR IMPLIED, THERE SHALL BE NO WORK STOPPAGE OR INTERFERENCE WITH THE PROGRESS OF THE WORK WHILE THE PROVISIONS OF ARTICLE 15 OF THIS AGREEMENT ARE BEING PROCESSED AND COMPLIED WITH.

HOWEVER, IF THE PROVISIONS OF 15.1 AND 15.3 OF THIS AGREEMENT ARE NOT COMPLIED WITH, THE UNION SHALL HAVE THE RIGHT TO WITHDRAW ITS MEMBERS FROM THE WORK SITE IN QUESTION.

3. THE APPLICANT AND LOCAL 18 VOLUNTARILY AGREED TO BE BOUND BY THE TERMS OF ARTICLE 15.6. NO DOUBT, DURING THE NEGOTIATION OF THIS COLLECTIVE AGREEMENT, LOCAL 18 RELINQUISHED CERTAIN POTENTIAL BENEFITS-MONETARY AND/OR OTHERWISE - IN ORDER TO HAVE AN EFFECTIVE REGULATOR ON THE APPLICANT'S BONA FIDES AND INTENTION OF LIVING UP TO ARTICLE 15 OF THE COLLECTIVE AGREEMENT.

4. THE EVIDENCE CLEARLY ESTABLISHED THAT THE APPLICANT CHOSE TO PREVARICATE DESPITE RECEIVING A SERIES OF LETTERS FROM THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES BUILDING AND CONSTRUCTION INDUSTRY AWARDING THE DISPUTED WORK TO THE CARPENTERS. IT MUST NOT BE FORGOTTEN THAT THE ABOVE-NOTED DETERMINATION WAS MADE IN ACCORDANCE WITH ARTICLE 15 OF THE COLLECTIVE AGREEMENT AND THAT LOCAL 18 HAD FORESEEN THE DIFFICULTY WHICH DID ARISE WITH RESPECT TO THE ASSIGNMENT OF THE DISPUTED WORK. THE OFFICERS OF LOCAL 18 ACTED WITH FORESIGHT AND DILIGENCE IN TRYING TO AVERT THE DISPUTE OUT OF WHICH CAME THE CONDUCT COMPLAINED OF BY THE APPLICANT.

5. ARTICLE 15.6 MAY BE INTERPRETED AS BEING CONTRARY TO SECTIONS 1(1)(1), 54 AND 55 OF THE LABOUR RELATIONS ACT. ASSUMING, WITHOUT DECIDING, THAT ARTICLE 15.6 IS VOID AND UNLAWFUL BECAUSE IT IS CONTRARY TO THE LANGUAGE AND SPIRIT OF SECTION 1(1)(1), 54 AND 55 OF THE LABOUR RELATIONS ACT, IT BECOMES NECESSARY TO EXAMINE THE INTENT AND CONDUCT OF THE PARTIES. HERE WE HAVE A FAILURE BY ONE OF THE PARTIES TO LIVE UP TO AN ARTICLE IN A COLLECTIVE AGREEMENT. THE OTHER PARTY TO THE COLLECTIVE AGREEMENT THEN EXERCISED ITS "RIGHTS" UNDER ARTICLE 15.6 CONSEQUENT UPON THE FAILURE OF THE OTHER PARTY TO LIVE UP TO ITS OBLIGATION.

6. IN BALL BROTHERS LIMITED CASE, 57 CLLC ¶18,091; CLS 76-576, THE BOARD ENUNCIATED CERTAIN CRITERIA TO BE APPLIED WHEN EXERCISING ITS DISCRETION UNDER SECTION 67 IN MAKING A DECLARATION THAT A STRIKE IS UNLAWFUL. THE BOARD ON THAT OCCASION STATED:

"THERE ARE IN OUR OPINION SEVERAL SITUATIONS IN WHICH A DECLARATION UNDER SECTION 59 (NOW SECTION 67) MIGHT WELL BE ISSUED EVEN THOUGH THE APPLICATION COMES ON FOR HEARING AFTER THE STRIKE HAS BEEN SETTLED; (1) WHERE A UNION HAS CALLED A NUMBER OF UNLAWFUL STRIKES AS PART OF A GENERAL PATTERN FOR GAINING ITS OBJECTIVES

IN DEFIANCE OF THE LAW; (11) WHERE, ALTHOUGH THE PARTICULAR UNLAWFUL STRIKE WHICH PROVIDED THE OCCASION FOR AN APPLICATION HAS BEEN SETTLED, THE EMPLOYER AFFECTED THEREBY HAS A REASONABLE FEAR THAT HIS OPERATIONS WILL AGAIN BE INTERRUPTED IN SIMILAR FASHION."

7. TO THE STRICTURES APPLIED IN THE BALL BROTHERS LIMITED CASE (SUPRA), I WOULD ADD A FURTHER PROVISIO THAT A DECLARATION OUGHT NOT BE ISSUED WHEN THE STOPPAGE ALLEGED TO BE A STRIKE WITHIN THE MEANING OF SECTION 1(1)(i) FLOWS FROM AN AGREEMENT OR PART OF AN AGREEMENT BETWEEN THE PARTIES WHICH IS IN ITSELF VOID AND UNLAWFUL. THE BOARD'S DISCRETION UNDER SECTION 67 OUGHT TO BE EXERCISED HAVING REGARD TO THE SURROUNDING CIRCUMSTANCES. IN THE INSTANT CASE, I WOULD NOT HAVE GRANTED A DECLARATION THAT THE RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE CONTRARY TO THE LABOUR RELATIONS ACT, SINCE THE APPLICANT IS ITSELF A PARTY TO A COLLECTIVE AGREEMENT WHICH CONTAINS PROVISIONS HELD BY THE MAJORITY TO BE INVALID. SINCE THE APPLICANT AND LOCAL 18 HAVE BOTH UNSUCCESSFULLY ATTEMPTED TO CONTRACT OUT OF THE LAWS OF ONTARIO, THE APPLICANT SHOULD NOT HAVE THE ADVANTAGE OF A DECLARATION IN THE CIRCUMSTANCES OF THIS CASE.

16332-69-U: ROMAT ORNAMENTAL IRON LTD. (APPLICANT) V. CANADIAN UNION OF GENERAL EMPLOYEES (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT MCCOMB AND A. MATLOFSKY FOR THE APPLICANT, G. MILLER FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 21, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

2. AT THE HEARING OF THIS APPLICATION COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT AGREED THAT THE EVIDENCE ADDUCED IN THE APPLICANT'S APPLICATIONS FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT IS UNLAWFUL (BOARD FILE NO. 16333-69-U) WOULD BE APPLIED TO THE INSTANT APPLICATION. THE RELEVANT EVIDENCE IS SET OUT IN THE BOARD'S DECISION DATED JULY 21, 1969, IN THE ABOVE REFERRED TO FILE.

3. BASED ON THE EVIDENCE, WE FIND THAT MURPHY, THE PRESIDENT OF THE RESPONDENT UNION AND THE UNION BARGAINING COMMITTEE, RATHER THAN CALLING OR AUTHORIZING A STRIKE ON JUNE 18TH, 1969, AND THEREAFTER, ACTIVELY TRIED TO PERSUADE THE EMPLOYEES OF THE APPLICANT TO REPORT FOR WORK ON THAT DATE AND, IN FACT, WAS INSTRUMENTAL IN

PREVAILING UPON THE EMPLOYEES TO OFFER THEIR SERVICES TO THE APPLICANT ON THE FOLLOWING DAY AND THEREAFTER.

4. IN THESE CIRCUMSTANCES, THERE IS NO BASIS FOR MAKING THE DECLARATION WHICH THE APPLICANT IS SEEKING. THE APPLICATION ACCORDINGLY IS DISMISSED.

16333-69-U: ROMAT ORNAMENTAL IRON LTD. (APPLICANT) V. MESSRS. COSMO COLARUSSO LUGI PAPPAIANNI ACHILLO PELLACHIA ALOIS HACEVAR SEVERINO DELGOBBO STANLEY STANESIC VINCENT COLARUSSO PETER JSAKALOS FRANCESCO PAPPAIANNI JOSEPH MORELLO MORRIS UNGER JOHN THISLE MARIO KNOVAK HEVERTON GEORGE LOFTERS GUS FOTIAS PEARL MUTTER SANTA ZUCCARINNI STEVEN WILSON ANTONIO LEARDI NUTARO CATALDO RENATO SIROZZATIA RAPHEAL NITTO (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT McCOMB AND A. MATLOFSKY FOR THE APPLICANT, G. MILLER FOR THE RESPONDENTS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER A. MAIN: JULY 21, 1969.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT IS UNLAWFUL.

2. THE CANADIAN UNION OF GENERAL EMPLOYEES (HEREINAFTER REFERRED TO AS THE UNION) WAS CERTIFIED BY THIS BOARD AS BARGAINING AGENT FOR THE EMPLOYEES OF THE APPLICANT (HEREINAFTER REFERRED TO AS ROMAT). FOLLOWING THE GIVING OF NOTICE, THE UNION AND ROMAT MET FOR THE PURPOSES OF BARGAINING WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. MEETINGS WERE HELD ON MAY 30TH, JUNE 10TH AND JUNE 17TH. ROMAT WAS REPRESENTED AT THESE MEETINGS BY THE PRESIDENT OF THE COMPANY, ALLEN MATLOFSKY, AND BY THE COMPANY'S SOLICITOR. THE UNION BARGAINING COMMITTEE WAS COMPOSED OF PATRICK MURPHY, THE GENERAL PRESIDENT OF THE UNION, A MRS. DEGRAW AND TWO EMPLOYEES, FRANCESCO PAPPAIANNI AND ACHILLO PELLACHIA.

3. IT APPEARS FROM THE EVIDENCE THAT ONE OF THE MAJOR AIMS OF THE UNION BARGAINING COMMITTEE WAS TO ACHIEVE AN UNDERTAKING OR AGREEMENT FROM ROMAT TO PROVIDE SAFE WORKING CONDITIONS FOR THE COMPANY'S EMPLOYEES. NO AGREEMENT ON SAFETY WAS REACHED AT THE FIRST TWO NEGOTIATING SESSIONS. ON JUNE 16TH, THE RESPONDENTS,

IN CONCERT, DECIDED THAT UNLESS AN AGREEMENT WAS CONCLUDED REGARDING THE SAFETY OF THE EMPLOYEES AT THE MEETING SCHEDULED FOR JUNE 17TH THEY WOULD REFUSE TO CONTINUE TO WORK FOR ROMAT. IN THEIR VIEW, THE CONDITIONS UNDER WHICH THEY WERE BEING REQUIRED TO WORK WERE HIGHLY DANGEROUS TO THEIR PHYSICAL WELL BEING.

4. AT THE MEETING OF THE PARTIES ON JUNE 17TH, PELLACHIA EXPRESSED TO MATLOFSKY THE SENTIMENTS OF THE RESPONDENTS. ACCORDING TO MATLOFSKY'S EVIDENCE, HE INDICATED ON THAT OCCASION THAT HE WAS PREPARED TO MAKE SOME IMPROVEMENTS IN THE WORKING CONDITIONS OF THE EMPLOYEES. THE FACT IS, HOWEVER, THAT AT THE MEETING THE COMPANY DID NOT ENTER INTO AN AGREEMENT OR GIVE ANY FIRM UNDERTAKING TO IMPROVE SAFETY CONDITIONS, NOTWITHSTANDING THE FACT THAT THE COMPANY WAS AWARE OF THE POSITION ON SAFETY TAKEN BY THE LARGE MAJORITY OF ITS EMPLOYEES. A FURTHER NEGOTIATING SESSION, HOWEVER, WAS ARRANGED FOR JUNE 20TH.

5. THE EVIDENCE IS THAT MURPHY, PAPPAIANNI AND PELLACHIA ENDEAVOURED ON THE EVENING OF JUNE 17TH TO COMMUNICATE WITH THE EMPLOYEES AND URGE THEM TO REPORT FOR WORK THE FOLLOWING MORNING, JUNE 18TH, EVEN THOUGH THE UNION HAD BEEN UNSUCCESSFUL IN SECURING AN AGREEMENT ON SAFETY. THEY WERE, HOWEVER, ONLY ABLE TO REACH A FEW EMPLOYEES THAT EVENING. THE NEXT MORNING ALL OF THE EMPLOYEES OF ROMAT APPEARED AT THE ENTRANCE TO THE PREMISES OF ROMAT PRIOR TO 8:00 A.M. WHICH WAS THE SCHEDULED STARTING TIME FOR THE WORK DAY. PAPPAIANNI AND PELLACHIA URGED THE EMPLOYEES TO GO TO WORK. IT APPEARS, HOWEVER, THAT ONLY FIVE WENT INTO THE SHOP. THE REMAINING TWENTY-TWO EMPLOYEES, WHO ARE THE NAMED RESPONDENTS, REFUSED TO GO TO WORK ON THE GROUNDS THAT CONDITIONS WERE UNSAFE.

6. MURPHY ARRIVED ON THE SCENE ABOUT MID-MORNING AND ACCORDING TO HIS EVIDENCE, HE TOO UNSUCCESSFULLY TRIED TO PERSUADE THE RESPONDENT EMPLOYEES TO GO TO WORK. IT SEEMS THAT AMONG OTHER UNSAFE CONDITIONS, THE EMPLOYEES ADVISED HIM THAT ROMAT WAS OPERATING A DEFECTIVE CRANE WHICH WAS A HAZARD TO THEM IN PERFORMING THEIR WORK. MURPHY THEREUPON REQUESTED A SAFETY INSPECTOR FROM THE DEPARTMENT OF LABOUR TO INSPECT THE CRANE. THE RESPONDENT EMPLOYEES REMAINED OUTSIDE THE PREMISES OF ROMAT ALL DAY. IT SEEMS THAT PLACARDS APPEARED, WHICH STATED THAT ROMAT'S PREMISES WERE UNSAFE. MURPHY, PAPPAIANNI AND PELLACHIA TESTIFIED THAT THEY HAD NO KNOWLEDGE AS TO WHO PREPARED THE PLACARDS. THAT EVENING MATLOFSKY SENT THE FOLLOWING TELEGRAM TO EACH OF THE RESPONDENTS: "YOU ARE PRESENTLY ENGAGED IN AN UNLAWFUL STRIKE. THE COMPANY HAS NO ALTERNATIVE SHOULD YOU NOT RETURN TO WORK BY TO-MORROW BUT TO TAKE DISCIPLINARY ACTION WHICH MIGHT INCLUDE DISCHARGE."

7. IT APPEARS THAT THE RESPONDENTS WERE PERSUADED TO REPORT FOR WORK THE FOLLOWING MORNING, JUNE 19TH. WE WOULD MENTION THAT MURPHY HAD ARRANGED FOR A SAFETY INSPECTOR TO EXAMINE THE CRANE WHICH THE RESPONDENTS COMPLAINED ABOUT ON THE SAME DAY. IN THE INTERIM PERIOD MATLOFSKY HIRED TWO SECURITY GUARDS FOR THE PURPOSE OF PROTECTING THE COMPANY'S PREMISES. THE TWO GUARDS, WILFRED PENNER AND LESLIE HOLMES, WERE AT THE ENTRANCE OF THE ROMAT PREMISES PRIOR TO THE COMMENCEMENT OF THE WORK DAY ON JUNE 19TH. THEY REMAINED ON DUTY EACH DAY FOR THE FOLLOWING WEEK.

8. THE EVIDENCE OF PAPPAIANNI, PELLACHIA AND ANOTHER EMPLOYEE GUS FOTIAS IS THAT THEY AND THE OTHER RESPONDENTS ASKED THE GUARDS FOR PERMISSION TO ENTER THE SHOP TO GO TO WORK. ACCORDING TO THEIR EVIDENCE PENNER AND HOLMES REFUSED TO LET THEM GO TO WORK, BUT RATHER TOLD THE EMPLOYEES TO GO INTO THE SHOP ONE AT A TIME AND GET THEIR TOOLS AND WORK CLOTHES, WHICH THEY DID. THE GUARDS ALSO DISTRIBUTED TO THE RESPONDENTS THEIR REGULAR PAY CHEQUES. JUNE 19TH WAS, IN FACT, A NORMAL PAY DAY FOR THE EMPLOYEES OF ROMAT. THE FOLLOWING DAY, JUNE 20TH, THE GUARDS ATTEMPTED TO RETURN THE UNEMPLOYMENT INSURANCE BOOKS OF THE RESPONDENTS TO THEM. THE RESPONDENTS, HOWEVER, REFUSED TO ACCEPT THEM.

9. A SAFETY INSPECTOR DID COME TO THE COMPANY'S PREMISES ON JUNE 19TH AND "TAGGED" THE CRANE. THE "TAGGING" OF THE CRANE MEANT THAT IT WAS DEFECTIVE AND WAS NOT TO BE OPERATED OR MOVED UNTIL IT WAS REPAIRED. THERE IS EVIDENCE TO SUGGEST THAT MATLOFSKY, DESPITE THE "TAGGING", HAD THE CRANE MOVED ALTHOUGH IT WAS NOT FUNCTIONALLY OPERATED. THE EVIDENCE OF THE RESPONDENTS WHO TESTIFIED IS THAT THEY AND THE OTHER RESPONDENTS HAVE REPORTED AT THE PREMISES OF THE COMPANY ON EVERY WORKING DAY FROM JUNE 19TH TO THE DATE OF THE LAST BOARD HEARING OF THIS APPLICATION ON JULY 7TH. THEIR EVIDENCE IS THAT THEY AND THE OTHER RESPONDENTS HAVE BEEN PREPARED TO GO TO WORK AND STILL WANT TO RETURN TO WORK BUT THAT THEY HAVE BEEN DENIED ENTRANCE TO THE SHOP BY THE COMPANY.

10. ANN MORLEY, THE BOOKKEEPER IN THE EMPLOY OF ROMAT, TESTIFIED THAT AS SHE ENTERED THE COMPANY'S PREMISES ON THE MORNING OF JUNE 18TH, SOME OF THE RESPONDENTS ASKED FOR THEIR UNEMPLOYMENT INSURANCE BOOKS. HER EVIDENCE IS THAT THESE REQUESTS PROMPTED HER TO MAKE A LIST OF THE RESPONDENTS WHICH LIST SHE GAVE TO THE SECURITY GUARDS ON JUNE 20TH AND ASKED THEM TO GIVE THE BOOKS TO THE EMPLOYEES AND HAVE THEM SIGN THE LIST. THE RESPONDENTS WHO TESTIFIED DENIED HAVING ASKED THE BOOKKEEPER FOR THEIR UNEMPLOYMENT INSURANCE BOOK AND AS HAS BEEN STATED NONE OF THEM ACCEPTED THEIR BOOKS.

11. THE EVIDENCE OF THE TWO SECURITY GUARDS IS QUITE DIFFERENT FROM THAT OF PAPPALANNI, PELLACHIA, FOTIAS AND ANOTHER EMPLOYEE ARNOLDO PEPPONI. THE TESTIMONY OF THE LATTER IS THAT WHEN HE ATTEMPTED TO GO TO WORK ON JUNE 23RD, AFTER RECOVERING FROM AN ACCIDENT AS A RESULT OF WHICH HE HAD BEEN ABSENT ON WORKMEN'S COMPENSATION, HE WAS REFUSED ENTRY INTO THE SHOP BY THE GUARDS. ACCORDING TO PENNER AND HOLMES NONE OF THE RESPONDENTS EVER SOUGHT ENTRANCE TO THE PLANT FOR THE PURPOSE OF RETURNING TO WORK. RATHER THEY ONLY SOUGHT ENTRY TO PICK UP THEIR TOOLS AND CLOTHES WHICH THEY WERE ALLOWED TO DO, ONE AT A TIME. THE TWO GUARDS TESTIFIED THAT THEY RECEIVED NO INSTRUCTIONS FROM MATLOFSKY NOT TO ALLOW THE RESPONDENTS INTO THE SHOP AND THAT THEY PERMITTED ANY EMPLOYEE WHO WANTED TO GO TO WORK TO DO SO. PENNER, IN HIS EVIDENCE, HOWEVER, MADE IT CLEAR THAT HE WAS FULLY AWARE OF THE IDENTITY OF THE EMPLOYEES ON THE "PICKET LINE" OUTSIDE THE SHOP AND THE IDENTITY OF THE EMPLOYEES WHO CONTINUED TO WORK AND THOSE WHO WERE SUBSEQUENTLY HIRED. HOLMES FOR HIS PART, WHILE ORIGINALLY TESTIFYING THAT HE RECEIVED NO INSTRUCTIONS FROM MATLOFSKY, LATER STATED THAT HE WAS INSTRUCTED TO ONLY LET THE RESPONDENTS IN, ONE AT A TIME, TO GET THEIR TOOLS. MATLOFSKY'S EVIDENCE IS THAT HE ISSUED NO INSTRUCTIONS TO THE GUARDS TO KEEP OUT THE RESPONDENTS.

12. MATLOFSKY'S EVIDENCE AS TO THE NUMBER OF PERSONS WHO WERE REGULARLY EMPLOYED IN HIS WORK FORCE, THE NUMBER HE HIRED THIS SPRING AND THE NUMBER OF PERSONS HE HAS EMPLOYED SINCE JUNE 18TH, IS SOMEWHAT CONFUSING. HE ORIGINALLY TESTIFIED THAT HE HAD A REGULAR COMPLEMENT OF SOME FIFTEEN EMPLOYEES. SUBSEQUENTLY, HE RAISED THE FIGURE TO TWENTY EMPLOYEES. IT WOULD APPEAR, HOWEVER, THAT AS OF JUNE 18TH HE HAD TWENTY-SEVEN EMPLOYEES, THAT IS, THE TWENTY-TWO NAMED RESPONDENTS AND THE FIVE WHO REMAINED ON THE JOB. MATLOFSKY'S EVIDENCE IS THAT HE HIRED ABOUT A DOZEN EMPLOYEES THIS SPRING AND THAT AT THE PRESENT TIME HE HAS A WORK FORCE OF UPWARDS OF A DOZEN PERSONS. THIS WOULD INDICATE THAT HE HAS HIRED SEVEN OR MORE EMPLOYEES SINCE JUNE 18TH. MATLOFSKY TESTIFIED THAT AS A RESULT OF THE PICKETING ACTIVITIES OF THE RESPONDENTS HE LOST A NUMBER OF CONTRACTS AND THEREFORE REQUIRED FEWER EMPLOYEES TO OPERATE HIS BUSINESS. ACCORDING TO THE EVIDENCE HOWEVER, IT WOULD SEEM THAT ONLY ONE TRUCK MAKING DELIVERIES HAD NOT ENTERED THE ROMAT PREMISES IN THE FACE OF THE RESPONDENTS' PRESENCE AT THE ENTRANCE. FURTHER IT APPEARS THAT NONE OF THE NEW EMPLOYEES HIRED SINCE JUNE 18TH HAVE BEEN UNABLE TO ENTER THE PREMISES, ALTHOUGH THE EVIDENCE OF ONE OF THE NEW EMPLOYEES, GEORGE BENDHA, SUGGESTS THAT THE NEW EMPLOYEES HAVE BEEN SUBJECTED TO A CERTAIN AMOUNT OF VERBAL HARASSMENT.

13. MATLOFSKY'S EVIDENCE REFLECTS A SOMEWHAT INCONSISTENT ATTITUDE TOWARDS THE RESPONDENTS. HE STATED THAT THE RESPONDENTS

WERE STILL EMPLOYEES AND HAD NOT BEEN DISCHARGED. HE ORIGINALLY TESTIFIED THAT HE WANTED THE RESPONDENTS TO RETURN TO WORK BUT ALMOST IN THE NEXT BREATH HE WENT ON TO SAY THAT HE WOULD NOT TAKE ANY OF THEM BACK BECAUSE "THEY ARE OUT TO BURY (HIM)." LATER IN HIS TESTIMONY MATLOFSKY INDICATED HIS WILLINGNESS TO TAKE BACK THE RESPONDENTS AT SUCH TIMES AS HE HAS SUFFICIENT WORK FOR THEM. MATLOFSKY IN NO WAY SUGGESTED THAT HE WAS PREPARED TO DISPLACE THE NEW EMPLOYEES HE HAS HIRED SINCE JUNE 18TH, TO MAKE ROOM IN HIS SHOP FOR THE RESPONDENTS.

14. AS HAS BEEN STATED, THE DEFENCE OF THE RESPONDENTS FOR THEIR REFUSAL TO GO TO WORK ON JUNE 18TH IS THAT WORKING CONDITIONS BOTH IN THE ROMAT SHOP AND WHILE DOING "ON SITE" WORK WERE SO UNSAFE AS TO BE DANGEROUS TO THEIR PHYSICAL WELL BEING. MATLOFSKY ADMITTED THAT HE HAD BEEN FINED BECAUSE OF THE HIGH ACCIDENT RATE AMONG HIS EMPLOYEES. HIS EVIDENCE IS, HOWEVER, THAT THE ACCIDENT RATE IN HIS SHOP SUBSEQUENTLY IMPROVED AND AS A RESULT HE RECEIVED A REBATE ON THE FINE. ALTHOUGH IT IS NOT CLEAR FROM THE EVIDENCE IT APPEARS THAT THIS INCIDENT HAPPENED A NUMBER OF YEARS AGO. MATLOFSKY HAD NO HESITATION IN ADMITTING, HOWEVER, THAT THERE HAD BEEN A SUBSTANTIAL INCREASE IN THE NUMBER OF ACCIDENTS AMONG HIS EMPLOYEES OVER THE PAST FEW YEARS. INDEED, HE STATED THAT ACCIDENTS HAD REACHED "EPIDEMIC" PROPORTIONS. HE SEEMED TO SUGGEST, HOWEVER, THAT THE ACCIDENTS WERE THE FAULT OF THE EMPLOYEES THEMSELVES. MATLOFSKY WENT SO FAR AS TO IMPLY THAT HIS EMPLOYEES, PARTICULARLY THOSE WITH SOME SENIORITY, HAD INTENTIONALLY BEEN ENGAGING IN A WORK SLOW DOWN OVER THE PAST NUMBER OF MONTHS AND HAD WILFULLY CAUSED ACCIDENTS. MATLOFSKY ADMITTED THAT NINETEEN CLAIMS HAD BEEN MADE UNDER THE WORKMEN'S COMPENSATION ACT AS A RESULT OF ACCIDENTS SINCE THE BEGINNING OF THIS YEAR AND THAT SEVEN EMPLOYEES WERE ABSENT ON COMPENSATION AS A RESULT OF ACCIDENTS ON JUNE 18TH. MOREOVER, A CHARGE HAS BEEN LAID AGAINST HIM FOR OPERATING THE DEFECTIVE CRANE.

15. WE WOULD MENTION THAT BENDHA, WHO HAS ONLY BEEN EMPLOYED SINCE JUNE 25TH, TESTIFIED THAT HE HAD NOT FOUND THE CONDITIONS UNDER WHICH HE WORKED TO BE UNSAFE. ACCORDING TO MATLOFSKY, NO EMPLOYEES, PRIOR TO THE NEGOTIATIONS WITH THE UNION, HAD COMPLAINED ABOUT SAFETY CONDITIONS AND THAT HE HAD TALKED TO THE EMPLOYEES ABOUT SAFETY. THE EVIDENCE OF BENDHA GIVES SOME SUPPORT TO MATLOFSKY ON THE LATTER POINT. A COUPLE OF THE RESPONDENTS WHO TESTIFIED, HOWEVER, STATED THAT THEY HAD COMPLAINED ABOUT SAFETY CONDITIONS AND FURTHER THAT TO THEIR KNOWLEDGE MATLOFSKY MADE A COMMENT TO THE EFFECT THAT THE EMPLOYEES WERE WORTH "TEN CENTS A DOZEN". THIS REMARK WHICH WAS NOT DENIED SUGGESTS A CALLOUS LACK OF CONCERN BY MATLOFSKY FOR THE WELL BEING OF HIS EMPLOYEES.

16. IN THE ROBERT MCALPINE LTD. CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1966, P. 698, THE COMPANY MADE AN APPLICATION FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 WAS UNLAWFUL. IN THAT CASE ONE OF THE DEFENCES OF THE UNION WAS THAT IF THE EMPLOYEES OF THE COMPANY REFUSED TO WORK THE REFUSAL WAS JUSTIFIED AND MADE NECESSARY BY REASON OF THE FACT THAT THEY WERE BEING REQUIRED TO WORK IN AN AREA THAT WAS UNSAFE AND UNDER CONDITIONS WHICH CONSTITUTED A MENACE TO THEIR HEALTH AND LIVES, AND FINALLY THAT THE EMPLOYEES ENTERTAINED A REASONABLE FEAR THAT THE WORK IN THE CIRCUMSTANCES PROPOSED BY THE COMPANY WOULD BE DANGEROUS. IN THAT CASE, THE COMPANY PROPOSED TO USE A SEVEN-MAN RATHER THAN AN EIGHT-MAN CREW TO DO CERTAIN TUNNEL EXCAVATION WORK. THE BOARD NOTED IN ITS DECISION THAT COUNSEL FOR BOTH PARTIES CLEARLY INDICATED THAT THE BOARD COULD NOT, BY REASON OF THE ABSENCE OF INDEPENDENT EXPERT WITNESSES AND BY REASON OF THE FACT THAT IT WAS NOT AN EXPERT IN AND COMPETENT TO DEAL WITH THE SUBJECT OF SAFETY, BE EXPECTED TO, AND WAS NOT BEING ASKED TO MAKE A DECISION AS TO WHETHER THE PERFORMANCE OF THE WORK BY A SEVEN-MAN CREW WOULD, IN ACTUAL FACT, CONSTITUTE A DANGER TO THE EMPLOYEES. THE BOARD, HOWEVER, RECOGNIZED THAT IF THE UNION COULD ESTABLISH THAT THE EMPLOYEES HAD GENUINE REASON TO BELIEVE THAT THEIR SAFETY WOULD BE IN DANGER IT WOULD BE JUSTIFICATION FOR THEIR REFUSAL TO WORK.

17. THE FACTS OF THE INSTANT CASE ARE QUITE DIFFERENT. WE WOULD POINT OUT THAT IN THE MCALPINE CASE THE BOARD WAS CONFRONTED WITH THE FACT THAT NO EXCAVATION WORK HAD BEEN CARRIED OUT BY THE SEVEN-MAN CREW PROPOSED BY THE COMPANY. IN THE INSTANT CASE, HOWEVER, WE HAVE SUBSTANTIAL EVIDENCE AS TO THE ACCIDENT RECORD OF ROMAT WHICH CAN ONLY BE DESCRIBED AS APPALLING CONSIDERING THE SIZE OF THE WORK FORCE. WE REJECT THE SUGGESTION OF MATLOFSKY THAT THE INJURIES WERE VIRTUALLY SELF-INFLICTED. RATHER THE EVIDENCE LEADS US TO CONCLUDE THAT THE CONDITIONS UNDER WHICH ROMAT WAS REQUIRING ITS EMPLOYEES TO WORK, IN FACT, WERE UNSAFE. IN ANY EVENT, THE RESPONDENTS HAD REASONABLE CAUSE TO BE CONCERNED FOR THEIR PHYSICAL WELL BEING AND WERE JUSTIFIED IN REFUSING TO WORK ON JUNE 18TH IN THE FACT OF THE COMPANY'S REFUSAL TO ENTER INTO AN AGREEMENT ON SAFETY.

18. IN THE CIRCUMSTANCES, IN THE EXERCISE OF ITS DISCRETION, THE BOARD IS NOT PREPARED TO ISSUE THE DECLARATION SOUGHT BY ROMAT. THE APPLICATION ACCORDINGLY IS DISMISSED.

DECISION OF BOARD MEMBER R. W. TEAGLE: JULY 21, 1969.

I DISSENT.

THE BOARD HAS DISCRETION UNDER SECTION 67 OF THE ACT TO ISSUE A DECLARATION THAT A STRIKE IS UNLAWFUL AND IN THIS CASE THE MAJORITY, IN THE EXERCISE OF THIS DISCRETION, HAS REFUSED TO ISSUE

THE DECLARATION. THE REASON IS SET OUT IN PARAGRAPH 17 OF THE MAJORITY DECISION WHICH READS IN PART:

...RATHER THE EVIDENCE LEADS US TO CONCLUDE THAT THE CONDITIONS UNDER WHICH ROMAT WAS REQUIRING ITS EMPLOYEES TO WORK, IN FACT, WERE UNSAFE. IN ANY EVENT, THE RESPONDENTS HAD REASONABLE CAUSE TO BE CONCERNED FOR THEIR PHYSICAL WELL BEING AND WERE JUSTIFIED IN REFUSING TO WORK ON JUNE 18TH IN THE FACE OF THE COMPANY'S REFUSAL TO ENTER INTO AN AGREEMENT ON SAFETY.

WITHOUT IN ANY WAY CONDONING THE WORKING CONDITIONS IN THE PLANT I HAVE DIFFICULTY IN BELIEVING THAT SAFETY IS THE REAL REASON FOR THE STRIKE. THE MEN SAY THAT THEY ARE NOW READY TO GO TO WORK ALTHOUGH NOTHING HAS CHANGED EXCEPT ONE CRANE HAS BEEN TAGGED AS UNSAFE. MR. MURPHY SAID THAT ON THE EVENING OF JUNE 17TH AND ON JUNE 18TH HE TRIED TO GET THE MEN TO GO TO WORK AS HE KNEW THEY WERE ON AN UNLAWFUL STRIKE. IN HIS EVIDENCE HE STATED THAT "THE LAW MUST BE OBEYED. (IT IS) UP TO (THE) STATE TO LOOK AFTER (THE) WELFARE OF (THE) MEN." WHY WOULD HE TRY TO GET THE MEN TO GO TO WORK IN AN UNSAFE PLANT IF HE FELT THE WORKING CONDITIONS WERE UNSAFE? I WOULD HAVE EXPECTED HIM TO TELL THE EMPLOYEES NOT TO GO TO WORK WHETHER THE STRIKE WAS LAWFUL OR UNLAWFUL AND THAT HE WOULD HAVE MARCHED UP AND DOWN ON THE PICKET LINE GIVING THEM HIS FULL SUPPORT.

I HAVE DIFFICULTY IN BELIEVING THAT THE REAL REASON FOR THE UNLAWFUL STRIKE WAS UNSAFE WORKING CONDITIONS. AS THE GENERAL PRESIDENT OF THE UNION MR. MURPHY DID NOT SUPPORT THE MEN IN THEIR STRIKE BUT ENCOURAGED THEM TO WORK IN WHAT HE TERMED "UNSAFE WORKING CONDITIONS" I FIND THE REAL REASON FOR THIS UNLAWFUL STRIKE WHICH TOOK PLACE DURING NEGOTIATIONS AND ON THE DAY THAT CONCILIATION WAS APPLIED FOR WAS NOT SAFETY BUT A NEGOTIATING TACTIC. ACCORDINGLY, I WOULD ISSUE A DECLARATION.

INDEXED ENDORSEMENTS - LOCK-OUT UNLAWFUL

16356-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: G. MILLER FOR THE APPLICANT, R. McCOMB AND A. MATLOFSKY FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND
BOARD MEMBER A. MAIN: JULY 21, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCK-OUT CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

2. AT THE HEARING OF THIS APPLICATION COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT AGREED THAT THE EVIDENCE ADDUCED IN THE COMPANY'S APPLICATION FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE COMPANY IS UNLAWFUL (BOARD FILE No. 16333-69-U) WOULD BE APPLIED TO THE INSTANT APPLICATION. THE RELEVANT EVIDENCE IS SET OUT IN THE BOARD'S DECISION DATED JULY 21, 1969, IN THE ABOVE REFERRED TO FILE.

3. THE EVIDENCE REVEALS SERIOUS CONFLICTS BETWEEN THE TESTIMONY OF MATLOFSKY, THE PRESIDENT OF THE COMPANY, AND THE SECURITY GUARDS HIRED BY HIM AND THE EVIDENCE OF EMPLOYEES OF THE COMPANY WHO WERE CALLED AS WITNESSES BY THE UNION IN THE STRIKE DECLARATION APPLICATION. IN LIGHT OF THE Demeanour OF MATLOFSKY IN THE WITNESS STAND, THE INCONSISTENCIES IN SOME OF HIS TESTIMONY AND THE OBVIOUS DISTORTIONS IN HIS ACCOUNT OF CERTAIN EVENTS, WE ARE PREPARED TO PLACE LITTLE RELIANCE ON ANY OF HIS EVIDENCE. FURTHER, ALTHOUGH PENNER AND HOLMES GAVE THEIR EVIDENCE IN A DIRECT FASHION, THEIR REPLIES TO CERTAIN QUESTIONS IN CROSS-EXAMINATION SUGGEST TO US THAT THEY CONSIDERED IT ONE OF THEIR DUTIES TO KEEP THE EMPLOYEES WHO HAD NOT REPORTED FOR WORK ON JUNE 18TH OUT OF THE SHOP AND THAT THEY DID SO ON THE EXPLICIT OR TACIT INSTRUCTIONS OF MATLOFSKY. ON THE OTHER HAND, WE FOUND THE EVIDENCE OF THE EMPLOYEES CALLED AS WITNESSES BY THE UNION TO BE CONSISTENT AND BELIEVABLE. WE THEREFORE, IN LARGE MEASURE, PREFER THEIR EVIDENCE OVER THAT OF THE WITNESSES CALLED BY THE COMPANY.

4. BASED ON ALL THE EVIDENCE, WE FIND THAT THE EMPLOYEES OF THE COMPANY WHO WITHHELD THEIR SERVICES ON JUNE 18TH, 1969, DID, IN FACT, OFFER TO RETURN TO WORK ON JUNE 19TH AND ON EVERY SUCCEEDING WORK DAY THEREAFTER. WE FURTHER FIND THAT MATLOFSKY REFUSED TO ALLOW THE SAID EMPLOYEES TO RETURN TO WORK ON JUNE 19TH, 1969, OR AT ANY TIME THEREAFTER. ACCORDINGLY, WE FIND THAT THE COMPANY ENGAGED IN A LOCK-OUT OF TWENTY-TWO OF ITS EMPLOYEES. SINCE THE LOCK-OUT OCCURRED FOLLOWING CERTIFICATION OF THE UNION AND DURING NEGOTIATIONS FOR A COLLECTIVE AGREEMENT, BUT BEFORE THE CONCILIATION PROCEDURE PRESCRIBED BY THE LABOUR RELATIONS ACT HAD BEEN COMPLETED, THE LOCK-OUT WAS UNLAWFUL.

5. THE BOARD ACCORDINGLY DECLARES THAT COMMENCING ON JUNE 19TH, 1969, AND THEREAFTER, THE RESPONDENT ENGAGED IN A LOCK-OUT OF SOME OF ITS EMPLOYEES AND THAT THE LOCK-OUT IS UNLAWFUL.

DECISION OF BOARD MEMBER R. W. TEAGLE:

JULY 21, 1969.

I DISSENT.

THE EVIDENCE AS STATED IN THE MAJORITY DECISION REVEALS SERIOUS CONFLICTS BETWEEN THE TESTIMONY OF MATLOFSKY, THE PRESIDENT OF THE COMPANY, AND THE SECURITY GUARDS HIRED BY HIM ON THE ONE HAND AND THE EVIDENCE OF THE EMPLOYEES OF THE COMPANY WHO WERE CALLED AS WITNESSES BY THE UNION ON THE OTHER.

AS I FIND THAT THE EMPLOYEES WERE ON AN UNLAWFUL STRIKE, IN MY OPINION THERE IS NO OBLIGATION ON THE PART OF THE COMPANY TO TAKE THEM BACK IN EMPLOYMENT. IN FACT THE EMPLOYEES WERE PICKETING THE PLANT AT THE SAME TIME THEY CLAIMED THEY WERE TRYING TO SEEK RE-EMPLOYMENT. IT IS NOT REALISTIC TO BELIEVE THE MEN WERE TRYING TO CROSS THEIR OWN PICKET LINE TO GO TO WORK.

FOR THE ABOVE REASONS I WOULD DISMISS THIS APPLICATION.

16416-69-U: LOCAL UNION #721, OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. JAMES HOWDEN AND PARSONS OF CANADA LTD. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: PAMELA A. THOMSON FOR THE APPLICANT;
B. V. ELLIOT, Q.C., J. PERRY BORDEN, J. ALAN JACKSON, W. A. GLASGOW
FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
H. F. IRWIN: JULY 29, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCKOUT IS UNLAWFUL. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT WHICH HAS EXPIRED. ON JUNE 24TH 1969 THE MINISTER OF LABOUR ADVISED THE PARTIES THAT HE WOULD NOT APPOINT A CONCILIATION BOARD. THE RESPONDENT EMPLOYED PERSONS, MEMBERS OF THE APPLICANT ON TWO PROJECTS: LAKEVIEW HYDRO STATION AND PICKERING GENERATING STATION. ON JULY 4TH 1969, THE TWO IRONWORKERS IN QUESTION WERE LAID OFF BY THE COMPANY. IN THESE CIRCUMSTANCES THE APPLICANT ALLEGES THAT THE RESPONDENT DISCHARGED THESE EMPLOYEES IN ANTICIPATION OF A LEGAL STRIKE AND TO DEFEAT THE BARGAINING AND EMPLOYMENT RIGHTS OF THE APPLICANT.

2. IT WAS ESTABLISHED IN EVIDENCE THAT THE WORK AT THE LAKEVIEW PROJECT WAS ESSENTIALLY COMPLETED BY JULY 4TH AND IN ANY EVENT, SUCH WORK AS MIGHT SUBSEQUENTLY BE NECESSARY TO DO INVOLVING IRONWORKERS WOULD BE COMPLETED BY HYDRO EMPLOYEES UNDER AN AGREEMENT BETWEEN HYDRO AND THE RESPONDENT AT THE PICKERING PROJECT. THE RESPONDENT, FOR ECONOMIC REASONS, SUB-CONTRACTED THE WORK WHICH WAS DONE BY IRONWORKERS TO CANADA MILLWRIGHTS COMPANY LTD. WHICH HAS A COLLECTIVE AGREEMENT WITH THE APPLICANT. THE RESPONDENT SUBMITTED THAT IT DID NOT LOCK OUT THE TWO IRONWORKER EMPLOYEES CONCERNED.

3. THE ISSUE IS WHETHER THERE WAS, IN ALL THE CIRCUMSTANCES, A LOCK OUT WITHIN THE MEANING OF SECTION 1(1)(g) OF THE LABOUR RELATIONS ACT. WE CAN FIND NO EVIDENCE TO SHOW THAT THE RESPONDENT IMPELLED THE EMPLOYEES TO CHANGE THEIR MINDS ABOUT SOMETHING THEY ARE ENTITLED TO DO UNDER THE ACT AS IS IMPLICIT IN THE WORDS "COMPEL OR INDUCE" USED IN THE ACT. SEE AMALGAMATED ELECTRIC CORPORATION LIMITED (1963) BOARD FILE #6746-63-U. THE ACTION OF THE RESPONDENT MAY HAVE PREVENTED THE EMPLOYEES FROM TAKING CERTAIN ACTION UNDER THE ACT BUT THIS DOES NOT CONSTITUTE A "LOCK OUT" AS CONTEMPLATED BY THE ACT. THE RESPONDENT WAS WITHIN ITS RIGHTS TO SUB-CONTRACT WORK AND OF COURSE, THE LAKEVIEW PROJECT HAD BEEN COMPLETED.

4. ON ALL THE EVIDENCE, WE ARE NOT SATISFIED THAT THE APPLICANT ESTABLISHED THAT THE RESPONDENT LOCKED OUT THE EMPLOYEES CONCERNED WITHIN THE MEANING OF THE ACT FOR WHICH A DECLARATION MIGHT ISSUED.

5. THE APPLICATION IS DISMISSED.

DISSENT OF BOARD MEMBER O. HODGES: JULY 29, 1969.

1. ON JUNE 24TH 1969, THE MINISTER RELEASED NOTICE TO THE PARTIES THAT NO BOARD OF CONCILIATION WOULD BE APPOINTED. UNDER SECTION 54(2)(b) THE EARLIEST DATE UPON WHICH A STRIKE OR LOCK-OUT COULD LEGALLY OCCUR WOULD HAVE BEEN THE DAY FOLLOWING JULY 10TH 1969.

2. THE ACTION COMPLAINED OF BY THE APPLICANT OCCURRED ON JULY 4TH 1969 WHEN TWO MEMBERS OF THE APPLICANT UNION WERE DISMISSED FROM THE LAKEVIEW PROJECT, WHERE CERTAIN WORK REMAINED TO BE DONE WITHIN THEIR TRADE. THIS WORK WAS OF A NATURE FALLING WITHIN THE JURISDICTION AND COMPETENCE OF THE MEN DISMISSED AND IN WHICH THEY HAD BEEN ENGAGED PRIOR TO TERMINATION.

3. THE RESPONDENT ARRANGED FOR THE WORK TO BE SUB-LET.

4. THERE WAS NO EVIDENCE OF A JURISDICTIONAL DISPUTE BETWEEN UNIONS, BUT ON THE CONTRARY AN AGREED UPON WORKING ARRANGEMENT ON THE JOB.

5. A FORMAL JURISDICTIONAL DIRECTION (EXHIBIT 3) FROM THE INTERNATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE BUILDING AND CONSTRUCTION INDUSTRY WITH REFERENCE TO THE PICKERING PROJECT DEALT ONLY WITH VERTICAL PUMPS. THE INSTANT APPLICATION CONCERNED THE INSTALLATION OF TURBINES AT LAKEVIEW AND PICKERING.

6. ARTICLE 27 OF THE COLLECTIVE AGREEMENT (EXHIBIT 1) IS NOT A LICENCE TO CONTRACT OUT. ARTICLE 32(C) WOULD APPEAR TO BAR SUB-LETTING

7. ARTICLE 3 OF THE COLLECTIVE AGREEMENT REQUIRED THE EMPLOYMENT OF MEMBERS OF THE UNION. SUCH MEMBERS WERE ALREADY EMPLOYED AND ON THE JOB.

8. ARTICLE 4 OF THE COLLECTIVE AGREEMENT, SUB-SECTIONS A, B, C AND D FURTHER CONFIRMED THE OBLIGATION TO EMPLOY ONLY APPLICANT UNION MEMBERS ON SUCH WORK WITHIN THE SCOPE OF THE AGREEMENT.

9. THE DURATION AND TERMINATION CLAUSE PROVIDES FOR THE CONTINUATION OF "WAGE SCALES AND CONDITIONS", PENDING NEGOTIATIONS AND SETTLEMENT.

10. IN MY OPINION THE EMPLOYER ACTED IN THIS CASE TO "BEAT THE UNION TO THE PUNCH", WITH A VIEW TO HEADING OFF A LEGAL STRIKE AND SUBSEQUENT RECOGNITION OF A LEGAL PICKET LINE BY THE OTHER TRADES, GETTING RID OF THE EMPLOYEES WHO MIGHT HAVE BECOME A LEGAL PICKET LINE WAS THE PRACTICAL EFFECT OF THE EMPLOYER'S ACTION.

11. WHETHER THE UNION COULD HAVE PROCEEDED TO ARBITRATION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AT THIS TIME IS A MATTER THAT WAS NOT ARGUED.

12. I FIND ON THE TESTIMONY OF WITNESSES AND ON THE EVIDENCE CONTAINED IN THE EXHIBITS FILED, THAT THE EMPLOYER DID UNLAWFULLY LOCK-OUT THE MEMBERS OF THE APPLICANT UNION AS CLAIMED.

INDEXED ENDORSEMENTS - PROSECUTION

16099-69-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC
(APPLICANT) V. HANES OF CANADA LIMITED (RESPONDENT).

BETWEEN: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, V. SKURTAT,
J. McCONNELL, M. ROBILLARD, FOR THE APPLICANT; GEORGE
FERGUSON, T. L. HEDGECOCK FOR THE RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFE: JULY 3, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A
PROSECUTION FOR THE ALLEGED VIOLATION BY THE RESPONDENT OF THE
PROVISIONS OF SECTION 12 AND SECTION 69 OF THE LABOUR RELATIONS
ACT, R.S.O. 1960 c. 202 AS AMENDED.

2. HAVING REGARD TO THE EVIDENCE WE FIND THAT THERE ARE
ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT PROPERLY
BE DETERMINED BY A MAGISTRATE. WE THEREFORE CONSENT TO THE INSTITU-
TION OF A PROSECUTION AGAINST THE RESPONDENT THAT IT ALLEGEDLY ON
MARCH 17TH 1969 UNLAWFULLY FAILED TO BARGAIN IN GOOD FAITH AND MAKE
EVERY REASONABLE EFFORT TO CONCLUDE A COLLECTIVE AGREEMENT CONTRARY
TO SECTIONS 12 AND 69 OF THE LABOUR RELATIONS ACT, R.S.O. 1960 c.
202.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER H. F. IRWIN: JULY 3, 1969.

ON THE EVIDENCE BEFORE ME I FIND THAT THE APPLICANT HAS
NOT MADE A PRIMA FACIE CASE AND I THEREFORE WOULD DISMISS THE
APPLICATION.

16100-69-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (APPLICANT)
V. HANES OF CANADA LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFE: JULY 3, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR THE ALLEGED VIOLATION BY THE RESPONDENT OF THE PROVISIONS OF SECTION 51 AND SECTION 69 OF THE LABOUR RELATIONS ACT, R.S.O. 1960 c. 202 AS AMENDED.

2. HAVING REGARD TO THE EVIDENCE WE FIND THAT THERE ARE ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT PROPERLY BE DETERMINED BY A MAGISTRATE. WE THEREFORE CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT THAT IT ALLEGEDLY ON MARCH 17TH 1969 AND MARCH 26TH 1969, UNLAWFULLY BARGAINED WITH EMPLOYEES IN THE BARGAINING UNIT SET OUT IN THE CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD DATED JULY 23RD 1968, WHILE THE APPLICANT CONTINUED TO BE ENTITLED TO REPRESENT THE SAID EMPLOYEES, CONTRARY TO THE PROVISIONS OF SECTIONS 51 AND 69 OF THE LABOUR RELATIONS ACT, R.S.O. 1960 c. 202.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER H. F. IRWIN: JULY 3, 1969.

ON THE EVIDENCE BEFORE ME I FIND THAT THE APPLICANT HAS NOT MADE A PRIMA FACIE CASE AND I THEREFORE WOULD DISMISS THE APPLICATION.

16101-69-U: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (APPLICANT)
V. HANES OF CANADA LIMITED (RESPONDENT).

BEFORE: O. H. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: JULY 3, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR THE ALLEGED VIOLATION BY THE RESPONDENT OF THE PROVISIONS OF SECTION 1(2), SECTION 3, SECTION 50(c) AND SECTION 69 OF THE LABOUR RELATIONS ACT R.S.O. 1960 c. 202 AS AMENDED.

2. HAVING REGARD TO THE EVIDENCE WE FIND THAT THERE ARE ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT PROPERLY BE DETERMINED BY A MAGISTRATE. WE THEREFORE CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT THAT IT ALLEGEDLY BY LETTERS DATED MARCH 17 1969 AND MARCH 27TH 1969 DID UNLAWFULLY SEEK BY THREATS AND OTHER MEANS TO COMPEL THOSE OF ITS EMPLOYEES ENGAGED IN AN UNLAWFUL STRIKE TO CEASE TO EXERCISE THEIR RIGHT TO CONTINUE TO STRIKE CONTRARY TO THE PROVISIONS OF SECTIONS 1(2), 3, 50(c) AND 69 OF THE LABOUR RELATIONS ACT, R.S.O. 1960 c. 202.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER H. F. IRWIN: JULY 3, 1969.

ON THE EVIDENCE BEFORE ME I FIND THAT THE APPLICANT HAS NOT MADE A PRIMA FACIE CASE AND I THEREFORE WOULD DISMISS THE APPLICATION.

16187-69-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)
V. LESLIE SINDEN (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: B. H. STEWART, W. CHENERY, R. MCLELLAND
AND J. H. COO FOR THE APPLICANT; R. KOSKIE AND LESLIE SINDEN FOR THE
RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
J. E. C. ROBINSON: JULY 29, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION OF THE RESPONDENT FOR THE ALLEGED VIOLATIONS OF SECTIONS 55, 57 AND 52 OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT THE RESPONDENT DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON MAY 9TH, 1969 THE RESPONDENT, BEING AN OFFICER OFFICIAL OR AGENT OF A TRADE UNION, COUNSELLED AN UNLAWFUL STRIKE;
- (B) THAT THE RESPONDENT DID CONTRAVENE SECTION 57 OF THE LABOUR RELATIONS ACT BY DOING AN ACT OR ACTS WHICH HE KNEW OR OUGHT TO HAVE KNOWN WOULD CAUSE PERSONS TO ENGAGE IN AN UNLAWFUL STRIKE COMMENCING MAY 9TH, 1969;
- (C) THAT THE RESPONDENT DID CONTRAVENE SECTION 52 OF THE LABOUR RELATIONS ACT BY SEEKING BY INTIMIDATION OR COERCION TO COMPEL PERSONS FROM EXERCISING THEIR RIGHTS UNDER THE SAID ACT OR PERFORMING THEIR OBLIGATIONS THEREUNDER, COMMENCING MAY 9TH, 1969.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: JULY 29, 1969.

I DISSENT FROM THE DECISION OF THE MAJORITY IN THAT I WOULD NOT GRANT CONSENT TO INSTITUTE PROSECUTION AGAINST THE RESPONDENT WITH RESPECT TO THE OFFENCE ALLEGED TO HAVE BEEN COMMITTED BY HIM IN PARAGRAPH 2(C) IN THE AWARD OF THE MAJORITY.

16188-69-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND LOCAL 1788 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: B. H. STEWART, W. CHENERY, R. MCLELLAND AND J. H. COO FOR THE APPLICANT; R. KOSKIE, H. SCHUELER AND A. MATHEWS FOR THE RESPONDENTS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER J. E. C. ROBINSON: JULY 29, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION OF THE RESPONDENTS FOR THE ALLEGED VIOLATION OF SECTION 55 OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED: THAT THE RESPONDENTS DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT MAY 9TH, 1969, THEY CALLED OR AUTHORIZED AN UNLAWFUL STRIKE.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: JULY 29, 1969.

1. I DISSENT.

2. HAVING REGARD TO ALL OF THE EVIDENCE, I WOULD NOT GRANT CONSENT TO THE INSTITUTION OF PROSECUTION AGAINST THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS.

16189-69-U: THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)
V. A. DEMOREST, C. ELDRIDGE, N. FERGUSON, L. GODFREY, W. GILROY T.
HUNTER, M. MINES, T. MCCORMACK, R. RONAN, W. SHAW, R. WILLIAMS, S. BELL,
C. L. BICKERSTAFF, W. CARR, G. FLETCHER, K. GRANSJOEN, T. HARTJES, D.
MCNANY, S. SMOCZYNCKY AND V. STRICKLAND (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: B. H. STEWART, W. CHENERY, R. MCLELLAND
AND J. H. COO FOR THE APPLICANT; R. KOSKIE, H. SCHUELER AND L. SINDEN
FOR THE RESPONDENTS.

DECISION OF THE BOARD: JULY 29, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION
OF THE RESPONDENTS FOR THE ALLEGED VIOLATIONS OF SECTION 57 OF THE
LABOUR RELATIONS ACT.

2. THE APPLICATION WITH RESPECT TO W. SHAW, C. L. BICKERSTAFF,
T. HARTJES AND D. MCNANY IS DISMISSED FOR LACK OF EVIDENCE.

3. HAVING REGARD TO THE EVIDENCE, THE BOARD CONSENTS TO THE
INSTITUTION OF A PROSECUTION AGAINST THE FOLLOWING RESPONDENTS FOR
THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THAT THE RESPONDENTS, A. DEMOREST, N. FERGUSON,
L. GODFREY, W. GILROY, T. HUNTER, M. MINES, T.
MCCORMACK, R. RONAN AND R. WILLIAMS CONTRAVENED
SECTION 57 OF THE LABOUR RELATIONS ACT IN THAT
COMMENCING MAY 12TH, 1969, THEY DID ACTS WHICH
THEY KNEW OR OUGHT TO HAVE KNOWN WOULD CAUSE
PERSONS TO ENGAGE IN AN UNLAWFUL STRIKE;

(B) THAT THE RESPONDENTS, S. BELL, W. CARR, C.
ELDRIDGE, G. FLETCHER, K. GRANSJOEN, S.
SMOCZYNCKY AND V. STRICKLAND CONTRAVENED
SECTION 57 OF THE LABOUR RELATIONS ACT IN THAT
COMMENCING MAY 13TH, 1969, THEY DID ACTS WHICH
THEY KNEW OR OUGHT TO HAVE KNOWN WOULD CAUSE
PERSONS TO ENGAGE IN AN UNLAWFUL STRIKE.

16334-69-U: ROMAT ORNAMENTAL IRON LTD. (APPLICANT) V. MESSRS. COSMO
COLARUSSO LUGI PAPPALANNI ACHILLO PELLACHIA ALOIS HACEVAR SEVERINO
DELCOBBO STANLEY STANEGIC VINCENT COLARUSSO PETER JSAKALOS FRANCESCO
PAPPALANNI JOSEPH MORELLO MORRIS UNGER JOHN THISLE MARIO KNOVAK
HEVERTON GEORGE LOFTERS GUS FOTIAS PEARL MUTTER SANTA ZUCCARINNI
STEVEN WILSON ANTONIO LEARDI NUTARO CATALDO RENATO SIROZZATIA
RAPHEAL NITTO (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
A. MAIN AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. McComb AND A. MATLOFSKY FOR THE
APPLICANT, G. MILLER FOR THE RESPONDENTS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD
MEMBER A. MAIN: JULY 21, 1969.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO
INSTITUTE A PROSECUTION OF THE NAMED RESPONDENTS WHO AS EMPLOYEES
OF THE APPLICANT ENGAGED IN AN UNLAWFUL STRIKE CONTRARY TO SECTION
54 OF THE LABOUR RELATIONS ACT COMMENCING ON JUNE 18TH, 1969.
2. AT THE HEARING OF THIS APPLICATION COUNSEL FOR THE
APPLICANT AND COUNSEL FOR THE RESPONDENTS AGREED THAT THE EVIDENCE
ADDUCED IN THE APPLICANT COMPANY'S APPLICATION FOR A DECLARATION
THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE COMPANY IS UNLAWFUL,
BOARD FILE No. 16333-69-U, WOULD BE APPLIED TO THE INSTANT APPLICA-
TION. THE RELEVANT EVIDENCE IS SET OUT IN THE BOARD'S DECISION
DATED JULY 21, 1969, IN THE ABOVE FILE.
3. EVEN ASSUMING BUT WITHOUT MAKING A FINDING THAT THE NAMED
RESPONDENTS DID ENGAGE IN AN UNLAWFUL STRIKE ON JUNE 18TH, 1969,
BASED ON THE EVIDENCE WE FIND THAT THEY WERE JUSTIFIED IN WITHHOLDING
THEIR SERVICES FROM THE APPLICANT DUE TO THE UNSAFE CONDITIONS UNDER
WHICH THE APPLICANT WAS REQUIRING THEM TO WORK.
4. IN THESE CIRCUMSTANCES, IN THE EXERCISE OF ITS DISCRETION,
THE BOARD IS NOT PREPARED TO CONSENT TO THE INSTITUTION OF THE
PROSECUTION APPLIED FOR BY THE APPLICANT.
5. THE APPLICATION ACCORDINGLY IS DISMISSED.

DECISION OF BOARD MEMBER R. W. TEAGLE: JULY 21, 1969.

TAKING INTO ACCOUNT ALL OF THE EVIDENCE OF THIS CASE I
WOULD EXERCISE MY DISCRETION AND NOT GRANT LEAVE TO PROSECUTE.

16335-69-U: ROMAT ORNAMENTAL IRON LTD.(APPLICANT) V. CANADIAN UNION
OF GENERAL EMPLOYEES AND MR. PATRICK MURPHY (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
A. MAIN AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. McComb AND A. MATLOFSKY FOR THE APPLICANT, G. MILLER FOR THE RESPONDENTS.

DECISION OF THE BOARD: JULY 21, 1969.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT PATRICK MURPHY, AN OFFICER OF THE RESPONDENT TRADE UNION, FOR COUNSELLING, PROCURING, SUPPORTING OR ENGAGING IN AN UNLAWFUL STRIKE CONTRARY TO SECTION 55 OF THE LABOUR RELATIONS ACT. THE APPLICANT IS ALSO APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT TRADE UNION FOR CALLING OR AUTHORIZING AN UNLAWFUL STRIKE BY THE EMPLOYEES OF THE APPLICANT COMPANY CONTRARY TO SECTION 55 OF THE LABOUR RELATIONS ACT.

2. AT THE HEARING OF THIS APPLICATION COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENTS AGREED THAT THE EVIDENCE ADDUCED IN THE APPLICANT COMPANY'S APPLICATION FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE COMPANY IS UNLAWFUL, BOARD FILE NO. 16333-69-U, WOULD BE APPLIED TO THE INSTANT APPLICATION. THE RELEVANT EVIDENCE IS SET OUT IN THE BOARD'S DECISION DATED JULY 21, 1969, IN THE ABOVE REFERRED TO FILE.

3. THE EVIDENCE LENDS NO SUBSTANCE TO THE ALLEGATIONS OF THE APPLICANT THAT EITHER OF THE RESPONDENTS CONTRAVENED SECTION 55 OF THE LABOUR RELATIONS ACT.

4. THE APPLICATION ACCORDINGLY IS DISMISSED.

16391-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ROMAT ORNAMENTAL IRON LTD. AND A. MATLOFSKY (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS A. MAIN AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: G. MILLER FOR THE APPLICANT, R. McComb AND A. MATLOFSKY FOR THE RESPONDENTS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER A. MAIN: JULY 21, 1969.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT COMPANY FOR CALLING OR AUTHORIZING AN UNLAWFUL LOCK-OUT CONTRARY TO SECTION 56 OF THE LABOUR RELATIONS ACT. THE APPLICANT IS ALSO APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT A. MATLOFSKY, AN OFFICER OF THE RESPONDENT COMPANY, FOR COUNSELLING,

PROCURING, SUPPORTING AND ENCOURAGING AN UNLAWFUL LOCK-OUT.

2. AT THE HEARING OF THIS APPLICATION COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENTS AGREED THAT THE EVIDENCE ADDUCED IN THE RESPONDENT COMPANY'S APPLICATION FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE COMPANY IS UNLAWFUL, BOARD FILE No. 16333-69-U, WOULD BE APPLIED TO THE INSTANT APPLICATION.

3. ON THE BASIS OF THE EVIDENCE THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT THE RESPONDENT ROMAT ORNAMENTAL IRON LTD. DID CALL OR AUTHORIZED AN UNLAWFUL LOCK-OUT AT ITS SHOP IN METROPOLITAN TORONTO COMMENCING ON JUNE 19TH, 1969, IN CONTRAVENTION OF SECTION 56 OF THE LABOUR RELATIONS ACT;
- (B) THAT THE RESPONDENT A. MATLOFSKY, AN OFFICER OF THE RESPONDENT COMPANY, DID COUNSEL, PROCURE, SUPPORT AND ENCOURAGE AN UNLAWFUL LOCK-OUT AT THE SHOP OF THE RESPONDENT COMPANY IN METROPOLITAN TORONTO, COMMENCING ON JUNE 19TH, 1969, IN CONTRAVENTION OF SECTION 56 OF THE LABOUR RELATIONS ACT.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER R. W. TEAGLE: JULY 21, 1969.

AS I WOULD NOT HAVE ISSUED A DECLARATION THAT THE COMPANY CALLED OR AUTHORIZED AN UNLAWFUL LOCK-OUT, I WOULD NOT GRANT LEAVE TO PROSECUTE IN THIS CASE.

INDEXED ENDORSEMENTS - SECTION 65

16195-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. MOBILE MATERIAL HANDLING EQUIPMENT LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. A. MACLEAN, F. RAO FOR THE APPLICANT;
AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 2, 1969.

1. THIS IS AN APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS, FRANCO INSALACO AND FRANCO LUISI (INCORRECTLY REFERRED TO IN THE COMPLAINT IN ERROR AS ANGELO LUISI) WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE ACT AND REQUEST THAT THEY BE REINSTATED IN THEIR FORMER EMPLOYMENT WITH FULL COMPENSATION.

2. AT THE HEARING THE COMPLAINANT ADVISED THE BOARD THAT IT WAS ABANDONING ITS CLAIM FOR FRANCO LUISI AGAINST THE RESPONDENT. HAVING REGARD TO THE FOREGOING THE CLAIM OF FRANCO LUISI IS THEREBY DISMISSED.

3. THE BOARD CONSIDERED THE EVIDENCE PRESENTED TO IT BY THE COMPLAINANT WITH RESPECT TO THE CLAIM OF FRANCO INSALACO AND IS SATISFIED THAT ON THE BALANCE OF PROBABILITIES THE AGGRIEVED PERSON, FRANCO INSALACO, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE ACT.

4. THE BOARD THEREFORE DETERMINES THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY FRANCO INSALACO TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD AND RECEIVED AT THE TIME OF HIS DISCHARGE. HAVING REGARD TO THE EVIDENCE WITH RESPECT TO THE AGGRIEVED PERSON'S LOSS OF EARNINGS, THE BOARD FURTHER DETERMINES THAT THE RESPONDENT PAY TO FRANCO INSALACO THE SUM OF \$62.10 FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY HIM BETWEEN THE TIME OF HIS DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER.

5. THE BOARD DIRECTS THAT THE PARTIES MEET WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS OR OTHER BENEFITS, IF ANY, NOW SUSTAINED OR WHICH HEREAFTER MAY BE SUSTAINED BY FRANCO INSALACO BETWEEN JUNE 30TH 1969 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT, WHICH SHALL BE PAID TO HIM IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES OF THE AMOUNT ABOVE REFERRED TO WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON. THE BOARD, AT THE REQUEST OF EITHER PARTY, WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO FRANCO INSALACO WHICH WILL THEREAFTER BE DETERMINED BY THE BOARD.

16204-69-U: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. MATTHEWS GROUP LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: AARON BROWN AND E. H. WINEGARDEN
FOR THE COMPLAINANT, R. J. FLINN FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 28, 1969.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF
THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT UNION WAS CERTIFIED ON APRIL 23RD, 1969 AS
BARGAINING AGENT FOR THE RESPONDENT'S DUMP TRUCK DRIVERS EMPLOYED IN
LAMBTON COUNTY.

3. THE THREE AGGRIEVED PERSONS, WILLIAM STEVENSON, GREGORY
EVANS AND CARL WOODCOCK, WERE EMPLOYED BY THE RESPONDENT AS DUMP
TRUCK DRIVERS IN LAMBTON COUNTY. THEY LIVED IN THE LONDON AREA
AND COMMUTED TO WORK EACH DAY. THE THREE EMPLOYEES PARTICIPATED
IN A CAR POOL WITH TWO OTHER PERSONS AND EACH TOOK THEIR TURN
DRIVING THEIR CAR. EACH OF THE AGGRIEVED PERSONS RECEIVED A PAY-
MENT OF \$6.00 PER DAY WHICH WAS TO BE APPLIED AS EITHER A TRAVEL-
LING ALLOWANCE OR FOR ROOM RENTAL AT THE EMPLOYEE'S OPTION.

4. ON TUESDAY, MAY 6TH, 1969, THE THREE AGGRIEVED PERSONS
WERE DISCHARGED BY THE RESPONDENT FOLLOWING THEIR REFUSAL TO PER-
FORM ESSENTIAL OVERTIME WORK. IT APPEARS THAT THE RESPONDENT WAS
ENGAGED IN SEWER AND ROAD CONSTRUCTION AT POINT EDWARD. ON MAY
6TH, 1969, THE RESPONDENT WAS GIVEN AN ORDER BY THE PROJECT CON-
SULTANT TO SPREAD CALCIUM ON THE DUSTY ROADS THAT THE RESPONDENT
WAS CONSTRUCTING. THE RESPONDENT, HAVING ORDERED THE CALCIUM
DELIVERED FROM LONDON, RECEIVED THE CALCIUM AT APPROXIMATELY 6:00
P.M. ON MAY 6TH. SINCE THE RESPONDENT REQUIRED THE SERVICES OF
ONE OF ITS THREE DUMP TRUCK DRIVERS TO DRIVE THE TRUCK WHICH WAS
TO SPREAD THE CALCIUM, THE RESPONDENT'S FOREMAN SPOKE TO EACH OF
THE THREE AGGRIEVED PERSONS ON THEIR RETURN TO THE RESPONDENT'S
YARD SHORTLY BEFORE 5:00 P.M. ON MAY 6TH AND OFFERED THE OVERTIME
WORK TO EACH IN TURN. TWO OF THE AGGRIEVED PERSONS REFUSED TO
WORK OVERTIME ON THE GROUNDS THAT THEY WOULD MISS THEIR RETURN
RIDE HOME TO LONDON SINCE THEY HAD DRIVEN TO WORK THAT DAY WITH
ANOTHER EMPLOYEE. THE THIRD AGGRIEVED PERSON, WHO HAD DRIVEN HIS
OWN CAR TO WORK THAT DAY, REFUSED TO WORK OVERTIME BECAUSE HE HAD
AN APPOINTMENT IN LONDON AT 7:00 P.M.

5. WHEN EACH OF THE AGGRIEVED PERSONS INDIVIDUALLY REFUSED
TO WORK, THE FOREMAN INFORMED THEM THAT IT WAS NECESSARY THAT ONE
OF THEM WORK AND HE LEFT IT TO THEM TO DECIDE WHO IT WAS TO BE.
HOWEVER, ALL THREE PERSISTED IN THEIR REFUSAL TO WORK OVERTIME
AND LEFT THE JOB AND RETURNED TO LONDON.

6. SINCE ALL THE AGGRIEVED PERSONS REFUSED TO WORK OVERTIME, THE FOREMAN CAUSED ONE OF THE RESPONDENT'S LABOURERS TO DRIVE THE TRUCK WHICH SPREAD THE CALCIUM. THE OVERTIME WORK TOOK SLIGHTLY MORE THAN ONE HOUR TO PERFORM.

7. THE THREE AGGRIEVED PERSONS WERE INFORMED ON MAY 7TH THAT THEY WERE DISCHARGED. AFTER THEY RETURNED TO LONDON ON MAY 6TH THE THREE AGGRIEVED PERSONS WERE INFORMED THAT THEY WERE NOT REQUIRED IN POINT EDWARD THE FOLLOWING DAY AND THEY WERE ASKED TO REPORT TO THE OFFICE. ON REPORTING TO THE OFFICE ON MAY 7TH THE THREE AGGRIEVED PERSONS WERE DISCHARGED FOR REFUSING TO PERFORM THE WORK THAT HAD BEEN REQUESTED.

8. THE EVIDENCE ALSO ESTABLISHED THAT MR. WOODCOCK HAD INFORMED THE RESPONDENT DURING THE WEEK PRECEDING THE EVENTS IN QUESTION THAT HE INTENDED TO QUIT HIS JOB ON FRIDAY, MAY 2ND. THE RESPONDENT'S TREASURER AND THE EQUIPMENT MANAGER DROVE FROM LONDON TO POINT EDWARD ON MAY 2ND AND AFTER HEARING WOODCOCK'S COMPLAINT CONCERNING THE FACT THAT HE HAD NOT BEEN GIVEN SUFFICIENT WORK PROMISED TO TRY TO REMEDY HIS COMPLAINT AND TALKED HIM INTO STAYING WITH THE COMPANY. MR. EVANS ALSO SPOKE TO THE RESPONDENT'S OFFICIALS AT THAT TIME AND VOICED CERTAIN COMPLAINTS WITH RESPECT TO MANAGEMENT. TWO OFFICIALS ATTEMPTED TO MOLLIFY MR. EVANS' COMPLAINT AS WELL.

9. THE UNION CALLED EVIDENCE WHICH TENDED TO ESTABLISH THAT THE COMPANY WAS NOT HAPPY WITH THE PROSPECT OF BARGAINING WITH IT ON BEHALF OF ITS THREE DUMP TRUCK DRIVERS AT POINT EDWARD. HOWEVER, HAVING REGARD TO THE TIME AND CIRCUMSTANCES SURROUNDING THE STATEMENTS AND THE CONTENT OF THE STATEMENTS TOGETHER WITH THE NATURE OF THE REPLIES GIVEN BY THE EMPLOYEES TO WHOM THE STATEMENTS WERE MADE, WE FIND THAT THE STATEMENTS WERE NOT INTENDED TO BE THREATS AGAINST THE EMPLOYEES BECAUSE OF THEIR UNION MEMBERSHIP BUT WERE PART OF THE USUAL BANTER WHICH TAKES PLACE IN SUCH CIRCUMSTANCES AMONG PERSONS WHO ARE VERY FAMILIAR WITH ONE ANOTHER.

10. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES IN THIS CASE, WE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT THE THREE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE ACT.

11. THE FACT THAT ON FRIDAY, MAY 2ND TWO OF THE RESPONDENT'S OFFICIALS PERSUADED ONE OF THE AGGRIEVED PERSONS NOT TO QUIT HIS JOB ON THAT DATE AND TOOK STEPS TO SATISFY THE COMPLAINT OF ANOTHER OF THE AGGRIEVED PERSONS MILITATES AGAINST THE PROPOSITION THAT THE RESPONDENT WANTED TO DISCHARGE THESE PERSONS FOR UNION ACTIVITY.

WE ARE SATISFIED THAT HAD ONE OF THE THREE AGGRIEVED PERSONS AGREED TO WORK OVERTIME AS REQUESTED, NONE OF THE THREE PERSONS WOULD HAVE BEEN DISCHARGED.

12. WHILE THE EXTENT OF THE DISCIPLINE IMPOSED BY THE RESPONDENT MAY HAVE BEEN SEVERE IN ALL THE CIRCUMSTANCES, IT CANNOT BE SAID THAT IT WAS SO UNREASONABLE THAT THE BOARD MUST FIND THAT THE REASON GIVEN FOR THE DISCHARGES WAS NOT THE REAL REASON FOR THE STEPS TAKEN BY THE COMPANY. THE RESPONDENT'S FOREMAN GAVE THE THREE EMPLOYEES EVERY OPORTUNITY TO CHANGE THEIR MIND. THE ORDER TO WORK OVERTIME WAS NOT AN UNREASONABLE ONE IN THE CIRCUMSTANCES NOR WAS IT GIVEN FOR THE PURPOSE OF PRECIPITATING THE EMPLOYEES' REFUSAL. THIS WAS WORK NORMALLY PERFORMED BY THE THREE PERSONS AND HAD TO BE DONE ON THE DATE IN QUESTION AFTER WORKING HOURS BECAUSE THERE WAS NOT SUFFICIENT CALCIUM AVAILABLE DURING NORMAL WORKING HOURS. IN ASSESSING THE REASONABLENESS OF THE RESPONDENT'S ACTIONS IN ORDER TO DETERMINE THE TRUE CAUSE OF DISCHARGE, WE HAVE TAKEN INTO CONSIDERATION THE EVENTS OF FRIDAY, MAY 2ND WHEN TWO OF THE AGGRIEVED PERSONS COMPLAINED ABOUT MANAGEMENT AND THE SHORT HOURS WORKED. TWO WORKING DAYS AFTER THESE COMPLAINTS WERE MADE, ALL OF THE RESPONDENT'S EMPLOYEES WHO DROVE DUMP TRUCKS REFUSED TO WORK ADDITIONAL HOURS. IT WOULD SEEM THAT THE EMPLOYEES HAD DECIDED TO PERSIST IN THEIR DISCONTENT NO MATTER WHAT TOOK PLACE.

13. FOR THE REASONS SET OUT ABOVE, WE MUST ACCORDINGLY FIND THAT THE COMPLAINT MUST FAIL AND THE COMPLAINT IN THIS MATTER IS THEREFORE DISMISSED.

16368-69-U: ALEXANDER R. WALKER (COMPLAINANT) v. EAGLE PRECISION TOOL LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 15, 1969.

1. THIS IS A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT REQUESTS THAT THE RESPONDENT PAY CERTAIN CONTRIBUTIONS TO THE CANADA PENSION PLAN "LOST DUE TO DISMISSAL".

2. A FIELD OFFICER WAS APPOINTED AND HE HAS TAKEN A STATEMENT FROM THE COMPLAINANT. STATED BRIEFLY, MR. WALKER'S COMPLAINT IS THAT HIS SERVICES WERE TERMINATED ON HIS 69TH BIRTHDAY. HE CLAIMS HE SHOULD HAVE BEEN EMPLOYED FOR ANOTHER YEAR UNTIL HE WAS 70 AND THE RESPONDENT SHOULD THEREFORE PAY HIS CONTRIBUTION INTO THE CANADA PENSION PLAN FOR ONE YEAR. THE COMPLAINANT STATES THAT THERE HAS BEEN NO UNION ACTIVITY AROUND THE PLANT DURING THE TIME THAT HE WAS EMPLOYED THERE.

3. IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, THE BOARD SAID:

...IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT.

THE ONLY SECTION OF THE LABOUR RELATIONS ACT CLAIMED TO HAVE BEEN VIOLATED BY THE RESPONDENT IS SECTION 65. HOWEVER, WE ARE SATISFIED THAT, ASSUMING THE COMPLAINANT COULD ESTABLISH THE FACTS SET OUT ABOVE, THE ACTIONS OF THE RESPONDENT WOULD NOT CONSTITUTE A BREACH OF ANY OTHER SECTION OF THE LABOUR RELATIONS ACT. CONSEQUENTLY, THIS IS NOT A MATTER OVER WHICH THE BOARD HAS ANY JURISDICTION. IF THE COMPLAINANT IS ENTITLED TO RELIEF, IT MUST BE BEFORE SOME FORUM OTHER THAN THE LABOUR RELATIONS BOARD.

4. ACCORDINGLY, THE COMPLAINT IS DISMISSED.

INDEXED ENDORSEMENTS - SECTION 47A

15640-68-M: THE ESSEX COUNTY BOARD OF EDUCATION (APPLICANT) V. LEAMINGTON-KINGSVILLE DISTRICT HIGH SCHOOL BOARD; NORTH ESSEX DISTRICT HIGH SCHOOL BOARD; ESSEX DISTRICT HIGH SCHOOL BOARD; LEAMINGTON PUBLIC SCHOOL BOARD; BOARD OF TRUSTEES OF THE HARROW DISTRICT HIGH SCHOOL; AMHERSTBURG DISTRICT HIGH SCHOOL BOARD; BOARD OF PUBLIC SCHOOL TRUSTEES OF THE TOWNSHIP SCHOOL AREA OF SANDWICH SOUTH; BOARD OF PUBLIC SCHOOL TRUSTEES OF THE TOWNSHIP SCHOOL AREA OF SANDWICH WEST; THE PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF HARROW AND COLCHESTER SOUTH TOWNSHIP; CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 528; CANADIAN UNION OF PUBLIC EMPLOYEES; BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 (RESPONDENTS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: REGINALD E. BURNELL, ALBERT D. LAW, FOR THE APPLICANT; MARIO HIKL, A. K. CUNNINGHAM, F. TAYLOR FOR THE RESPONDENT (CANADIAN UNION OF PUBLIC EMPLOYEES); J. B. WATERMAN, LEO PARE FOR THE RESPONDENT (BUILDING SERVICE EMPLOYEES UNION, LOCAL 210).

DECISION OF THE BOARD:

JULY 2, 1969.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 47A(5) OF THE LABOUR RELATIONS ACT. THE APPLICANT DERIVES ITS EXISTENCE PURSUANT TO THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT 1968 R.S.O. c 122, AS THE RESULT OF THE STATUTORY AMALGAMATION OF A NUMBER OF DIFFERENT SCHOOL BOARDS WHICH FORMERLY EXISTED IN THE COUNTY OF ESSEX. THE EMPLOYEES IN THOSE SCHOOLS ARE EITHER NOT REPRESENTED OR ARE REPRESENTED BY SEPARATE UNIONS. ALL OF THE PARTIES CONCEDED THAT THE BOARD HAS JURISDICTION TO ENTERTAIN THIS APPLICATION PURSUANT TO SECTION 47A(10), AND THAT THERE IS A DEEMED INTERMINGLING OF EMPLOYEES AND THEREFORE THE BOARD MAY EXERCISE THE LIKE POWERS AS IT MAY EXERCISE UNDER SECTION 47A(5) AND SECTION 47A(7) OF THE LABOUR RELATIONS ACT. THOSE SECTIONS PROVIDE:

47A(5) "WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED,

- (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;
- (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT."

47A(7) "BEFORE DISPOSING OF ANY APPLICATION UNDER THIS SECTION, THE BOARD MAY MAKE SUCH INQUIRY, MAY REQUIRE THE PRODUCTION OF SUCH EVIDENCE AND THE DOING OF SUCH THINGS, OR MAY HOLD SUCH REPRESENTATION VOTES, AS IT DEEMS APPROPRIATE."

2. IN THE INSTANT CASE THE APPLICANT HAS SOUGHT TO CENTRALIZE ITS ADMINISTRATION. THE CENTRAL ADMINISTRATION OFFICES ARE AT LEAMINGTON AND THE OFFICE STAFF AND THE SUPERVISORY PERSONNEL WHO CO-ORDINATE THE ENTIRE ORGANIZATION ARE IN

THE CENTRAL OFFICES. THE BUSINESS ADMINISTRATOR AT LEAMINGTON COORDINATES THE ENTIRE ORGANIZATION OF THE RESPONDENT; HE FORMULATES POLICY INCLUDING PERSONNEL POLICY WHICH IS THEN APPROVED BY THE SCHOOL BOARD. PURCHASING AND ACCOUNTING INCLUDING PAYROLL EITHER HAVE BEEN OR WILL BE CENTRALIZED AS OF JULY 1ST, 1969. WHILE OTHER BUSINESS ADMINISTRATORS REMAIN IN THE ORGANIZATION THEY DO NOT EXERCISE LOCAL AUTONOMY AND ALL SIGNIFICANT DECISIONS ARE MADE CENTRALLY. IN ADDITION, THE APPLICANT INDICATED THAT THE LOCAL BUSINESS ADMINISTRATORS WOULD BE TERMINATED OR OTHERWISE ABSORBED INTO THE SYSTEM. AT THE VARIOUS SCHOOLS THE EMPLOYEES WITH WHOM WE ARE CONCERNED ARE SUPERVISED BY HEAD OR CHIEF CARETAKERS WHO ASSIGN WORK BUT DO NOT HIRE OR FIRE AND DO NOT FORMULATE ANY POLICIES BUT MERELY IMPLEMENT THOSE POLICIES WHICH EMANATE FROM THE CENTRAL OFFICES.

3. THE RESPONDENT, BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, HAS SUBMITTED THAT THE EFFECT OF SECTION 47A IS TO PRESERVE BARGAINING RIGHTS AND IN SUPPORT OF ITS ARGUMENT CITES OSHAWA WHOLESALE LIMITED V. RETAIL, CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 1965 FEB. OLRB MTHLY. REP. 584. THIS RESPONDENT SUGGESTS THAT THE BARGAINING UNITS CAN BE DEFINED ON A GEOGRAPHICAL BASIS AND IF THE BOARD PROCEEDS TO DEFINE THE BARGAINING UNIT HEREIN ON A GEOGRAPHICAL BASIS IT WOULD ALSO BE PROCEEDING IN CONFORMITY WITH THE ACT AND PRESERVING THE EXISTING BARGAINING RIGHTS. THE EFFECT OF THE RESPONDENT'S SUBMISSION WOULD BE TO DIVIDE THE COUNTY INTO TWO SEPARATE BARGAINING UNITS - ONE BARGAINING UNIT REPRESENTED BY BUILDING SERVICE EMPLOYEES UNION, LOCAL 210, AND THE OTHER BARGAINING UNIT REPRESENTED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES. IN ADDITION TO THE TWO SEPARATE BARGAINING UNITS THERE IS A FURTHER GROUP OF EMPLOYEES DOING SIMILAR WORK TO THOSE EMPLOYEES IN THE BARGAINING UNITS, AND WHO ARE NOT REPRESENTED BY ANY TRADE UNION. IN ARRIVING AT OUR CONCLUSION IN THIS CASE IT IS PERHAPS NECESSARY TO DEAL WITH SOME OF THE PROVISIONS OF SECTION 47 OF THE LABOUR RELATIONS ACT AND TO DISTINGUISH THE VARIOUS SECTIONS AND THEIR EFFECT.

4. THE PURPOSE OF SECTION 47A(5) IS TO AVOID THAT CONFUSION WHICH ARISES WHERE EMPLOYEES REPRESENTED BY ONE TRADE UNION AS THEIR BARGAINING AGENT ARE INTERMINGLED WITH OTHER EMPLOYEES WHO MAY OR MAY NOT BE REPRESENTED BY A BARGAINING AGENT. HENCE, INTERMINGLING, WHETHER IT IS FACTUAL OR DEEMED BY OPERATION OF SECTION 47A(10), IS A CONDITION PRECEDENT TO BRINGING AN APPLICATION UNDER SECTION 47A(5). ONCE THAT CONDITION IS SATISFIED THE BOARD THEN MAY EXERCISE ITS POWERS UNDER SECTION 47A(5) AND SECTION 47A(7). INTERMINGLING THEN BECOMES ONE OF THE FACTORS WHICH THE BOARD CONSIDERS IN DETERMINING AN APPROPRIATE BARGAINING UNIT UNDER SECTION 47A(A).

5. DIFFERENT CONSIDERATIONS ARE TAKEN INTO ACCOUNT BY THE BOARD IN DETERMINING THE BARGAINING UNITS IN APPLICATIONS MADE UNDER SECTION 47A OF THE LABOUR RELATIONS ACT AND IN APPLICATIONS FOR CERTIFICATION. OSHAWA WHOLESALE CASE; SUPRA. ALSO, THE CONSIDERATIONS APPLICABLE UNDER SECTIONS 47A(2) AND (3) DIFFER FROM THE CONSIDERATIONS APPLICABLE UNDER SECTION 47A(5). SECTIONS 47A(2) AND (3) REQUIRE A DETERMINATION BASED ON A "LIKE BARGAINING UNIT" WHETHER OR NOT THE SAME IS APPROPRIATE. IN APPLYING SECTIONS 47A(2) AND (3) THE BOARD HAS STATED:

"THE [BOARD] MUST TAKE INTO ACCOUNT, AND IN LARGE MEASURE BE GOVERNED BY, THE SCOPE OF THE BARGAINING UNIT ALREADY IN EXISTENCE."

OSHAWA WHOLESALE CASE, SUPRA. HOWEVER, IN APPLYING SECTION 47A(5) A DETERMINATION IS BASED ON THE APPROPRIATE BARGAINING UNIT.

6. WE ARE FURTHER OF THE OPINION THAT THE CONSIDERATIONS APPLICABLE TO DETERMINING THE APPROPRIATE BARGAINING UNITS PURSUANT TO SECTION 47A(5) MAY DIFFER FROM THE CONSIDERATIONS APPLICABLE TO DETERMINING THE "UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING" PURSUANT TO SECTION 6(1). FOR EXAMPLE, PRESERVATION OF BARGAINING RIGHTS, A FACTOR WHICH MAY NOT EXIST UNDER SECTION 6(1) MAY BE A FACTOR IN CONSIDERATIONS PURSUANT TO SECTION 47A 5(A).

7. WITH THESE CONSIDERATIONS IN MIND AND HAVING REGARD TO THE EVIDENCE, THE APPLICABLE LEGISLATION INCLUDING THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT 1968, SUPRA, AND THE COMPETING FACTORS IN THIS CASE SUCH AS THE APPROPRIATE BARGAINING UNIT, THE EXISTING BARGAINING UNITS, THE OTHER UNREPRESENTED EMPLOYEES, AND THE REPRESENTATION BY DIFFERENT TRADE UNIONS OF EMPLOYEES ENGAGED IN SIMILAR WORK, WE FIND THAT THE COUNTY-WIDE UNIT IS THE APPROPRIATE UNIT. ACCORDINGLY WE DECLINE TO FRAGMENT THE EMPLOYEES AS SUGGESTED BY THE APPLICANT. WE ALSO SEE NO REASON TO DEPART FROM OUR STANDARD BARGAINING UNIT DESCRIPTION IN THIS CASE. WE THEREFORE FIND THAT ALL EMPLOYEES OF THE APPLICANT IN THE COUNTY OF ESSEX ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS SAVE AND EXCEPT OFFICE STAFF, SUPERVISORS, FOREMEN AND PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. WE ARE FURTHER OF THE OPINION THAT THE VARIOUS CONFLICTING FACTORS CAN BEST BE RESOLVED BY THE HOLDING OF A REPRESENTATION VOTE PURSUANT TO SECTION 47A (7) AND WE THEREFORE DIRECT THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES IN THE AFORESAID BARGAINING UNIT PURSUANT TO SECTION 47A(7). VOTERS WILL BE ASKED TO INDICATE WHETHER THEY WISH TO BARGAIN COLLECTIVELY THROUGH BUILDING

SERVICE EMPLOYEES UNION, LOCAL 210, OF THE CANADIAN UNION OF PUBLIC EMPLOYEES. WE NOTE THAT THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 528 HAS ABANDONED ITS BARGAINING RIGHTS.

9. ALL EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

15877-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ELGIN COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: F. L. TAYLOR FOR THE APPLICANT;
ROGER F. CYR, BRUCE E. MACGREGOR FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 8, 1969.

2. THIS IS AN APPLICATION PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT. THERE ARE 35 EMPLOYEES OF THE RESPONDENT WHO MAY BE AFFECTED BY THIS APPLICATION. THE APPLICANT HOLDS BARGAINING RIGHTS FOR TWO OF THOSE EMPLOYEES BY VIRTUE OF A CERTIFICATE GRANTED BY THIS BOARD DATED DECEMBER 11TH, 1968.

3. THE RESPONDENT DERIVES ITS EXISTENCE PURSUANT TO THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT R.S.O. c. 122 AS THE RESULT OF THE STATUTORY AMALGAMATION OF A NUMBER OF SCHOOL BOARDS WHICH FORMERLY EXISTED IN THE COUNTY OF ELGIN. THE BOARD HAS POWER TO DEAL WITH THIS APPLICATION PURSUANT TO THE POWERS CONTAINED IN S. 47A(5) AND S. 47A(7) OF THE LABOUR RELATIONS ACT.

4. RECENT DECISION OF THIS BOARD DEALING WITH COUNTY SCHOOL BOARDS INDICATE THAT THE APPROPRIATE BARGAINING UNIT HAS BEEN FOUND TO BE A COUNTY-WIDE BARGAINING UNIT. SEE E.G. PEEL COUNTY BOARD OF EDUCATION CASE, BOARD FILE #15613-68-M; MIDDLESEX COUNTY BOARD OF EDUCATION CASE, BOARD FILE #15935-68-M; WELLAND COUNTY BOARD OF EDUCATION CASE, BOARD FILE #16145-68-M; WATERLOO COUNTY BOARD OF EDUCATION CASE, BOARD FILE #15561-68-M; AND ESSEX COUNTY BOARD OF EDUCATION CASE, BOARD FILE #15640-68-M. WE SEE NO REASON IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE TO DEPART FROM PREVIOUS

BOARD DECISIONS WITH RESPECT TO COUNTY SCHOOL BOARDS AND ACCORDINGLY WE FIND THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY-TREASURER, AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. IN THE "SCHOOL BOARD CASES" MENTIONED, THE BOARD HAS ATTEMPTED TO RESOLVE THE CONFLICTING INTERESTS BY ORDERING A REPRESENTATION VOTE. THE REASONS FOR ORDERING A VOTE ARE DISCUSSED IN THOSE CASES AND NEED NOT BE DISCUSSED. IN THE INSTANT CASE THERE ARE NO FACTORS WHICH WOULD CAUSE US TO DEPART FROM THE METHOD THAT THE BOARD HAS ADOPTED IN RESOLVING THE CONFLICTING FACTORS AND ACCORDINGLY A VOTE WILL BE TAKEN OF THE EMPLOYEES IN THE BARGAINING UNIT PURSUANT TO S. 47A(7) OF THE LABOUR RELATIONS ACT.

6. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

WRITTEN REASONS

16288-69-R: GRAY'S DEPARTMENT STORES LIMITED (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION LOCAL 1002, AFL:CIO:CLC (RESPONDENT).

DECISION OF THE BOARD: JULY 16, 1969.

1. THE BOARD IN ITS DECISION DATED JULY 2, 1969 DISMISSED THIS APPLICATION FOR THE REASONS GIVEN AT THE HEARING. THE APPLICANT HAS REQUESTED THE BOARD TO GIVE THE REASONS IN WRITING.

2. THIS WAS AN APPLICATION UNDER SECTION 47A(4) OF THE LABOUR RELATIONS ACT FOR TERMINATION OF THE BARGAINING RIGHTS OF THE RESPONDENT. THE BOARD DISMISSED THE APPLICATION ON THE BASIS OF SUBMISSIONS MADE BY THE APPLICANT ITSELF.

3. THE APPLICANT ARGUED THAT THE BOARD WAS WITHOUT JURISDICTION TO HEAR A CASE UNDER SECTION 47A EXCEPT ON A REFERENCE FROM THE MINISTER AND SUCH WAS NOT THE CASE HERE. THE APPLICANT ALSO ARGUED THAT SECTION 47A DOES NOT BECOME OPERATIVE UNLESS AND UNTIL THERE IS EVIDENCE THAT A SALE, WITHIN THE MEANING OF THE SECTION, HAS TAKEN PLACE.

4. THE BOARD FINDS NO VALIDITY IN THE APPLICANT'S SUBMISSION WITH RESPECT TO THE NECESSITY FOR A MINISTERIAL REFERENCE BEFORE IT MAY ACT UNDER SECTION 47A.

5. AS TO THE SECOND SUBMISSION, THE APPLICANT, WHO, OF COURSE HAD THE CARRIAGE OF THE MATTER, DECLINED TO ADDUCE EVIDENCE AS TO WHETHER A SALE HAD TAKEN PLACE. SINCE, AS THE APPLICANT ITSELF ARGUED, THE ESTABLISHMENT OF THE FACT OF A SALE IS A PREREQUISITE TO THE EXERCISE BY THE BOARD OF THE POWERS SET OUT IN SECTION 47A, AND SINCE SUCH EVIDENCE WAS NOT BEFORE THE BOARD, THE APPLICATION WAS, FOR THAT REASON DISMISSED.

INDEXED ENDORSEMENTS - SECTION 79A

16216-69-M: THE TORONTO TYPOGRAPHICAL UNION No. 91, I.T.U. (TRADE UNION) V. RAPID TYPESETTING COMPANY LIMITED (EMPLOYER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN SCOTT AND T. W. WILDE FOR THE TRADE UNION, HENRY SIEGAL, Q.C., AND SAM GOLDBERG FOR THE EMPLOYER.

DECISION OF THE BOARD: JULY 23, 1969.

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2. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE ACT, THE QUESTION AS TO WHETHER THE MINISTER HAS THE AUTHORITY UNDER SECTION 34(4) OF THE ACT TO APPOINT THE EMPLOYER'S NOMINEE TO A BOARD OF ARBITRATION TO BE ESTABLISHED PURSUANT TO THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION AND THE EMPLOYER.

3. THE TRADE UNION AND THE EMPLOYER ARE PARTIES TO A COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO ON SEPTEMBER 1ST, 1969.

4. A DISPUTE HAVING ARISEN BETWEEN THE TRADE UNION AND THE EMPLOYER UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT AND THE EMPLOYER HAVING FAILED TO APPOINT A MEMBER TO A BOARD OF ARBITRATION WHICH THE UNION HAS ATTEMPTED TO ESTABLISH UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT, THE MINISTER, UPON THE REQUEST OF THE TRADE UNION, HAS THE AUTHORITY UNDER THE PROVISIONS OF SECTION 34(4) OF THE LABOUR RELATIONS ACT TO APPOINT THE EMPLOYER'S MEMBER TO THE BOARD OF ARBITRATION WHICH THE UNION HAS ATTEMPTED TO ESTABLISH. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD UNDER THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT IS THEREFORE IN THE AFFIRMATIVE.

16323-69-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(TRADE UNION) V. FRANKI CANADA LIMITED (EMPLOYER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. A. HERRON FOR THE TRADE UNION,
G. W. HATELY FOR THE EMPLOYER.

DECISION OF THE BOARD: JULY 21, 1969.

1. THIS IS A REFERENCE FROM THE MINISTER MADE PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER IN ALL THE CIRCUMSTANCES THE MINISTER HAS THE AUTHORITY TO APPOINT A CONCILIATION OFFICER UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT.

2. THE EMPLOYER (HEREINAFTER REFERRED TO AS FRANKI) ENTERED INTO A WORKING AGREEMENT WITH THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF TORONTO AND VICINITY (HEREINAFTER REFERRED TO AS THE COUNCIL) ON DECEMBER 7TH, 1961. ARTICLE 2 OF THE WORKING AGREEMENT ENTITLED "RECOGNITION" READS:

THE COMPANY RECOGNIZES THE COUNCIL AND ITS
AFFILIATED UNIONS AS THE COLLECTIVE BARGAINING
AGENCY FOR ALL ITS EMPLOYEES WITHIN THE
JURISDICTIONAL AREA OF THE COUNCIL.

THE TRADE UNION (HEREINAFTER REFERRED TO AS LOCAL 793) IS A MEMBER OF THE COUNCIL.

3. ARTICLE 5 OF THE WORKING AGREEMENT ENTITLED "WAGES, HOURS AND WORKING CONDITIONS" READS IN PART:

THE COMPANY AGREES TO RECOGNIZE AND BE
BOUND BY THE AGREEMENTS EXISTING BETWEEN
EACH OF THE UNIONS AFFILIATED WITH THE
COUNCIL AND THE TORONTO BUILDERS'
EXCHANGE AND SPECIFICALLY AGREES THAT THE
PROVISIONS RELATING TO WAGES, HOURS AND
WORKING CONDITIONS SET FORTH IN THE SAID
AGREEMENTS SHALL BE BINDING ON THE COMPANY.

SINCE THE WORKING AGREEMENT WAS ENTERED INTO BY THE PARTIES THE NAME OF THE TORONTO BUILDERS' EXCHANGE HAS BEEN CHANGED TO THE TORONTO CONSTRUCTION ASSOCIATION.

4. ARTICLE 6 OF THE WORKING AGREEMENT ENTITLED "TERMINATION"
READS:

THIS AGREEMENT SHALL REMAIN IN FORCE FOR A PERIOD OF ONE YEAR FROM THE DATE HEREOF AND SHALL CONTINUE IN FORCE FROM YEAR TO YEAR THEREAFTER UNLESS IN ANY YEAR NOT LESS THAN SIXTY DAYS BEFORE THE DATE OF ITS TERMINATION, EITHER PARTY SHALL FURNISH THE OTHER WITH NOTICE OF TERMINATION OF, OR PROPOSED REVISION OF, THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL COMPLETION OF ALL JOBS THAT HAVE BEEN COMMENCED DURING THE OPERATION OF THIS AGREEMENT.

5. SINCE FRANKI AND THE COUNCIL ENTERED INTO THE WORKING AGREEMENT IN 1961 NEITHER PARTY HAS GIVEN NOTICE TO THE OTHER OF ITS DESIRE TO TERMINATE THE AGREEMENT. ACCORDINGLY, THE WORKING AGREEMENT HAS CONTINUED TO RENEW ITSELF FROM YEAR TO YEAR TO THE PRESENT TIME. LOCAL 793 IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND ALL MASONRY CONTRACTORS, MEMBERS OF THE TORONTO CONSTRUCTION ASSOCIATION. THIS AGREEMENT IS EFFECTIVE FROM MAY 1ST, 1969 UNTIL APRIL 30TH, 1971 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. (FRANKI, INCIDENTALLY, IS NOT A MEMBER OF THE TORONTO CONSTRUCTION ASSOCIATION). THE PREDECESSOR TO THIS AGREEMENT WAS A COLLECTIVE AGREEMENT BETWEEN THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION AND LOCAL 793 WHICH WAS EFFECTIVE FROM SEPTEMBER 1ST, 1965 TO APRIL 30TH, 1969.

6. THE PROVISION OF ARTICLE 5 QUOTED ABOVE INCORPORATES BY REFERENCE THE PROVISION RELATING TO WAGES, HOURS AND WORKING CONDITIONS CONTAINED IN THE CURRENT COLLECTIVE AGREEMENT BETWEEN LOCAL 793 AND TORONTO CONSTRUCTION ASSOCIATION WHICH CAME INTO EFFECT ON MAY 1ST OF THIS YEAR. THE OPERATIVE AGREEMENT BETWEEN FRANKI AND LOCAL 793, HOWEVER, IS THE WORKING AGREEMENT (SEE CANADIAN WESTINGHOUSE CO. LTD. CASE, O.L.R.B. MONTHLY REPORT, APRIL 1968, P. 108). ACCORDINGLY, IF IT IS THE DESIRE OF LOCAL 793, WHICH APPARENTLY IS THE CASE, TO NEGOTIATE A SEPARATE COLLECTIVE AGREEMENT WITH FRANKI, IT WAS NECESSARY FOR LOCAL 793 TO GIVE TIMELY NOTICE PURSUANT TO THE WORKING AGREEMENT.

7. THE WORKING AGREEMENT RENEWED ITSELF A FURTHER YEAR ON DECEMBER 7TH, 1968. LOCAL 793, HOWEVER, ONLY GAVE NOTICE TO FRANKI OF ITS DESIRE TO BARGAIN FOR A COLLECTIVE AGREEMENT ON DECEMBER 10TH, 1968, THREE DAYS LATER. IN OTHER WORDS, THE NOTICE GIVEN BY LOCAL 793 TO FRANKI WAS UNTIMELY.

8. ACCORDINGLY, IN REPLY TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER, LOCAL 793 HAS NOT ESTABLISHED AN ENTITLEMENT TO CONCILIATION SERVICES. THE MINISTER IS THEREFORE WITHOUT AUTHORITY TO APPOINT A CONCILIATION OFFICER.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

15567-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: JULY 10, 1969.

1. BY LETTER DATED JULY 7TH, 1969, MURRAY C. DILLON, WHO APPEARED AS COUNSEL FOR THE OBJECTORS AT THE HEARING IN THIS MATTER, REQUESTED THE BOARD TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO PROVIDE HIM WITH AN OPPORTUNITY TO FULLY EXPLAIN HIS PARTICIPATION IN THESE PROCEEDINGS ON THE GROUNDS THAT THE BOARD'S DECISION OF JUNE 25TH, 1969 CAUSED HIM "CONSIDERABLE CONCERN BECAUSE OF THE IMPLICATIONS OF IMPROPER CONDUCT WITH RESPECT TO (HIM), AS A SOLICITOR, THAT IT CONTAINS."

2. IT WAS NOT THE INTENTION OF THE BOARD TO CAST DOUBT ON THE PROPRIETY OF MR. DILLON'S CONDUCT BECAUSE OF THE MANNER IN WHICH HE CONTACTED THE OBJECTOR WHO TESTIFIED IN SUPPORT OF THE PETITION AS RECORDED IN THE BOARD'S DECISION REFERRED TO ABOVE. THE BOARD ACCEPTED THE WITNESS' TESTIMONY THAT HE WAS CONTACTED BY TELEPHONE BY MR. DILLON AT THE BEHEST OF AN EMPLOYEE OF THE RESPONDENT WHO WAS EMPLOYED AT THE MISSISSAUGA BRANCH. THERE WAS NOTHING IMPROPER ABOUT THAT PROCEDURE. HOWEVER, THE MISSISSAUGA EMPLOYEE REFERRED TO AND WHO APPARENTLY HAD ORIGINALLY INSTRUCTED MR. DILLON WAS NOT CALLED TO TESTIFY CONCERNING THE CIRCUMSTANCES SURROUNDING HIS GIVING MR. DILLON THE INSTRUCTIONS DESCRIBED ABOVE. NEITHER THE WITNESS WHO TESTIFIED NOR MR. DILLON COULD GIVE THE BOARD THE NECESSARY FIRST-HAND EVIDENCE OF THE CIRCUMSTANCES CONCERNING THE MISSISSAUGA EMPLOYEE'S OPPOSITION TO THE APPLICATION. IT WAS OBVIOUS FROM THE EVIDENCE BEFORE THE BOARD THAT THE MISSISSAUGA EMPLOYEE WAS IN TRUTH THE "ORIGINATOR" OF THE PETITION WHICH WAS FILED IN THIS MATTER. HOWEVER, AS THE BOARD STATED IN ITS DECISION OF JUNE 25TH, "SINCE IT IS CLEAR FROM THE EVIDENCE THAT ALL THE CIRCUMSTANCES ARE NOT BEFORE THE BOARD, THE OBJECTORS HAVE ACCORDINGLY FAILED TO MEET THE ONUS ON THEM IN THIS REGARD."

3. WHILE THE BOARD DID NOT FIND THAT THE PETITION CAST DOUBT ON THE MEMBERSHIP EVIDENCE FILED BY THE UNION SO AS TO NECESSITATE THE TAKING OF A REPRESENTATION VOTE IN THIS MATTER, THERE WAS NOTHING IN THE BOARD'S DECISION WHICH WAS DIRECTED AGAINST THE PROPRIETY OF MR. DILLON'S CONDUCT AS A SOLICITOR. AS STATED ABOVE, THE BOARD DID NOT INTEND ANYTHING IN ITS DECISION TO BE CONSTRUED AS A CRITICISM OF MR. DILLON'S CONDUCT AS A SOLICITOR AND WE ACCEPT ALL THE EVIDENCE ADDUCED THROUGH THE WITNESS CALLED BY MR. DILLON. HOWEVER THAT MAY BE, THERE WAS A HIATUS IN THE EVIDENCE IN THAT THE MISSISSAUGA EMPLOYEE WAS NOT CALLED TO TESTIFY.

4. IN THE CIRCUMSTANCES OUTLINED ABOVE, THE BOARD DOES NOT DEEM IT ADVISABLE TO LIST THIS MATTER FOR RE-HEARING IN ORDER TO GRANT MR. DILLON AN OPPORTUNITY TO GIVE EVIDENCE ON THE POINT HE REFERRED TO IN HIS LETTER SINCE MR. DILLON'S CONDUCT IS NOT IN DOUBT. THE BOARD IS ALSO OF OPINION THAT NO FURTHER HEARING SHOULD BE HELD TO PERMIT ADDITIONAL EVIDENCE TO BE ADDUCED BY THE MISSISSAUGA EMPLOYEE SINCE THE PARTIES HAD FULL OPPORTUNITY TO CALL WHATEVER EVIDENCE WAS AVAILABLE TO THEM AT THE HEARING IN THIS MATTER.

DECISION OF BOARD MEMBER H. F. IRWIN: JULY 10, 1969.

AS MR. DILLON'S LETTER WAS IN RESPECT OF THE MAJORITY DECISION DATED JUNE 25TH, 1969, FROM WHICH I DISSENTED, I HAVE NOT PARTICIPATED IN THE ABOVE DECISION. I MERELY CONFIRM MY DISSENT DATED JUNE 25TH, 1969.

16321-69-R: CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 18, 1969.

1. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 APPLIED FOR CERTIFICATION FOR A BARGAINING UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES OF THE RESPONDENT, PILLAR CONSTRUCTION LIMITED. (FILE NO. 16407-69-R). THE APPLICATION WAS DISMISSED ON THE GROUND THAT IT WAS UNTIMELY HAVING REGARD TO THE CERTIFICATION OF THE APPLICANT ON JULY 3RD, 1969. LOCAL 1988 NOW ALLEGES THAT THERE WERE NO CARPENTERS EMPLOYED BY THE RESPONDENT ON JUNE 17, 1969, THE DATE OF THE MAKING OF THE APPLICATION IN THIS CASE. THE APPLICANT DENIES THIS. THE RESPONDENT, ALTHOUGH INVITED TO DO SO, HAS MADE NO COMMENTS ON THIS QUESTION.

2. IN THESE CIRCUMSTANCES, THE BOARD HAS DECIDED TO RECONSIDER ITS DECISION IN THIS MATTER DATED JULY 3RD, 1969. TO THIS END, MR. J. R. HENDERSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND, MORE PARTICULARLY, ON THE QUESTION AS TO WHETHER THE RESPONDENT HAD CARPENTERS AT WORK IN BOARD AREA No. 13 ON JUNE 17, 1969.

16246-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 498 (APPLICANT) v. STRADWICK INDUSTRIES LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 8, 1969.

1. FOLLOWING THE ISSUANCE OF THE BOARD'S CERTIFICATE CERTIFYING THE APPLICANT TRADE UNION IN THIS MATTER, THE RESPONDENT WROTE TO THE BOARD MAKING CERTAIN ALLEGATIONS WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. IT APPEARS FROM A FURTHER LETTER FROM THE RESPONDENT DATED JUNE 27TH, 1969 THAT THE RESPONDENT HAD KNOWLEDGE OF THE ALLEGATIONS THE DAY FOLLOWING THAT ON WHICH THE INCIDENT IN QUESTION WAS ALLEGED TO HAVE OCCURRED. THE MEMBERSHIP EVIDENCE WAS RECEIVED BY THE BOARD ON JUNE 2ND, HAVING BEEN MAILED REGISTERED ON MAY 30TH, 1969. THE RESPONDENT THEREFORE MUST HAVE HAD KNOWLEDGE OF THE INCIDENTS NO LATER THAN MAY 31ST, 1969.

2. THE TERMINAL DATE FOR THIS APPLICATION WAS JUNE 9TH AND ON JUNE 12TH THE BOARD APPOINTED AN EXAMINER WHO MET WITH THE PARTIES ON JUNE 16TH. THE BOARD'S DECISION CERTIFYING THE APPLICANT IS DATED JUNE 19TH, 1969. THE LETTER MAKING THE ALLEGATIONS WAS DATED JUNE 21ST, 1969.

3. THE RESPONDENT IN THIS CASE DID NOT FILE A REPLY ALTHOUGH DULY SERVED WITH NOTICE OF THE APPLICATION AND WITH REPLY FORMS. THE EMPLOYEES IN QUESTION DID NOT FILE ANY STATEMENT OF OBJECTIONS OR DESIRE TO MAKE REPRESENTATIONS, ALTHOUGH NOTICE OF THE APPLICATION WAS POSTED ON THE EMPLOYER'S PREMISES.

4. SECTION 47 OF THE BOARD'S RULES OF PROCEDURE PROVIDES IN PART AS FOLLOWS:

47.-(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

(A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR

(B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

(2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

SECTION 47 CLEARLY CONTEMPLATES THAT A PARTY INTENDING TO MAKE ALLEGATIONS OF IMPROPER CONDUCT MUST DO SO PROMPTLY. IN THIS CASE THE RESPONDENT NOT ONLY DID NOT ACT EXPEDITIOUSLY BUT DID NOT EVEN BOTHER TO FILE A REPLY. IN ALL THE CIRCUMSTANCES, WE CAN SEE NO REASON FOR ENTERTAINING THE ALLEGATIONS AT THIS TIME. (SEE FLECK MANUFACTURING CASE, 62 CLLC PAR. 16236.).

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 79(1)

16112-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. OLIVETTI UNDERWOOD LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: JULY 8, 1969.

1. THE APPLICANT, BY LETTER DATED JULY 2ND, 1969, HAS CHALLENGED THE ACCURACY OF THE BOARD'S DECISION DATED JUNE 24TH, 1969, IN THIS MATTER. WHILE THE APPLICANT HAS NOT REQUESTED THE BOARD TO RECONSIDER ITS DECISION, IN ORDER TO ANSWER THE APPLICANT'S LETTER THE BOARD WILL TREAT THE LETTER AS A REQUEST FOR RECONSIDERATION UNDER SECTION 79(1) OF THE LABOUR RELATIONS ACT.

2. IT APPEARS THAT THE FACTS RELIED ON AND THE INTERPRETATION PLACED ON THE EVIDENCE BY THE APPLICANT ARE NOT IN ACCORD WITH THE BOARD'S UNDERSTANDING OF THE EVIDENCE ADDUCED AT THE HEARING IN THIS MATTER. SINCE THE BOARD CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES PRIOR TO ARRIVING AT ITS DECISION DATED JUNE 24TH, 1969, AND SINCE THE APPLICANT HAD NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE THAT WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER, THE BOARD IS OF OPINION THAT THERE IS NOTHING IN THE APPLICANT'S LETTER WHICH WOULD CAUSE THE BOARD TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED JUNE 24TH, 1969, AND THE APPLICANT'S REQUEST IS ACCORDINGLY DENIED.

CONCURRING DECISION OF BOARD MEMBER O. HODGES:

JULY 8, 1969.

THE FINDING OF THE BOARD GIVING WEIGHT TO THE PETITION OF CERTAIN EMPLOYEES OPPOSING THE UNION WAS MADE AFTER CONSIDERING ALL OF THE EVIDENCE AND THE CREDIBILITY OF THE WITNESSES WHO TESTIFIED AS TO THE ORIGIN AND CIRCULATION OF THEIR PETITION.

WHILE THERE WAS CERTAIN EVIDENCE OF MANAGEMENT OPPOSITION TO THE APPLICANT UNION AND OF SUPPORT FOR THE POSITION OF THE OBJECTORS, I WAS UNABLE TO ATTACH SUCH EVIDENCE TO THE PETITION IN QUESTION WITH SUFFICIENT CLARITY TO COMPLETE THE CONNECTION WITH THE EMPLOYEE OBJECTORS AT THE LOCATION WHERE THEY WERE EMPLOYED.

WHILE THE RULES OF THE BOARD DO NOT PERMIT THE CROSS-EXAMINATION OF OBJECTOR'S TESTIMONY OF THE PETITION, THE APPLICANT WAS PERMITTED TO ASK QUESTIONS OF THE WITNESSES THROUGH THE CHAIRMAN IN THE USUAL WAY, AND MADE THE BEST USE POSSIBLE OF THIS PROCEDURE TO UNCOVER THE FACTS.

UNDER THESE CIRCUMSTANCES I AM OBLIGED TO JOIN WITH THE OTHER MEMBERS OF THE BOARD IN THE REPLY TO THE PROTEST OF THE APPLICANT.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

16205-69-R: LABOURERS' INT'L. UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) v. ALBERT BIANCHI, C.O.B. AS ALSI CONSTRUCTION COMPANY
(RESPONDENT).

1. THIS APPLICATION FOR CERTIFICATION WAS ORIGINALLY LISTED FOR HEARING ON JUNE 19, 1969 IN ORDER TO ENABLE THE RESPONDENT TO ADDUCE EVIDENCE IN SUPPORT OF HIS ALLEGATIONS CONCERNING THE EVIDENCE FILED BY THE APPLICANT. AT THAT HEARING IT WAS FOUND THAT AN

INTERPRETER WAS NECESSARY AND FOR THIS AS WELL AS OTHER REASONS INQUIRY INTO THE ALLEGATIONS WAS POSTPONED TO ANOTHER DATE. THE MATTER CAME ON FOR HEARING AGAIN ON JULY 4TH. AT THAT TIME COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT HE HAD RECEIVED INSTRUCTIONS NOT TO PROCEED WITH THE ALLEGATIONS IN VIEW OF THE FACT THAT THE JOBS WERE COMPLETED AND THE RESPONDENT NO LONGER HAD EMPLOYEES IN THE BARGAINING UNIT. IN THESE CIRCUMSTANCES THE BOARD INTENDS TO DEAL WITH THE APPLICATION ON THE BASIS OF THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES NOW BEFORE IT. IT SHOULD BE NOTED THAT THE FACT THAT A RESPONDENT HAS NO EMPLOYEES IN THE BARGAINING UNIT AT THE TIME OF THE BOARD'S DECISION DOES NOT PREVENT THE BOARD FROM DEALING WITH THE APPLICATION SINCE THE MATERIAL DATE UNDER SECTION 7 IS THE DATE OF THE MAKING OF THE APPLICATION. (SEE TRAUGOTT CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, FEB. 1967, P. 920.).

(JULY 8, 1969).

AUGUST, 1969



ONTARIO

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DURING AUGUST 1969

BARGAINING AGENTS CERTIFIED DURING AUGUST

NO VOTE CONDUCTED

16024-69-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. RECORDING AND STATISTICAL COMPANY (A DIVISION OF SPERRY RANK CANADA LIMITED) (RESPONDENT) V. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT DOING COMPOSING ROOM AND LETTER PRESS WORK SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN IN ITS PLANT LOCATED AT 650 KING STREET WEST, TORONTO, ONTARIO, PERSONS REGULARLY EMPLOYED NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND THOSE EMPLOYEES OF THE RESPONDENT COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16026-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HAMILTON, SAVE AND EXCEPT MEAT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 597).

16039-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HAMILTON SAVE AND EXCEPT ASSISTANT STORE MANAGERS, HEAD CASHIERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGERS AND HEAD CASHIER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 598).

16073-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BELL FUEL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO EMPLOYED AS OIL BURNER SERVICEMEN, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 600).

16094-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT ST. CATHARINES, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 602).

16166-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 452 (APPLICANT) V. THE CORPORATION OF THE CITY OF CORNWALL (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT DEPARTMENT HEADS, DEPUTY DEPARTMENT HEADS, ASSISTANT DEPARTMENT HEADS, PURCHASING AGENT, PARKS SUPERINTENDENT, TAX AND WATER COLLECTOR, SUPERVISOR OF THE TREASURY OFFICE, CHIEF INSPECTOR, ASSISTANT TO THE CLERK-ADMINISTRATOR AND LICENSE ISSUER, PROFESSIONAL ENGINEERS, PUBLIC WORKS SUPERINTENDENT, FILTRATION PLANT SUPERINTENDENT, RECREATION DIRECTOR, ASSISTANT RECREATION DIRECTOR, TREASURY ACCOUNTANT, SECRETARIES TO THE MAYOR, CLERK-ADMINISTRATOR, CITY TREASURER AND INDUSTRIAL COMMISSIONER, THE PERSONNEL DEPARTMENT, TAX ARREARS COLLECTORS, SOCIAL SERVICES FIELD STAFF, PUBLIC WORKS FOREMEN, ENGINEERING ASSISTANTS, ENGINEERING ACCOUNTANT, PARKS FOREMAN, ALL SUMMER STUDENTS EMPLOYED IN THE RESPONDENT'S PARKS AND RECREATION SUMMER PROGRAMS, PARKING AUTHORITY EMPLOYEES, AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD GRANTED TO THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 234." (111 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 607).

16261-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TORONTO HYDRO-ELECTRIC SYSTEM (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, EMPLOYEES IN THE PERSONNEL DEPARTMENT AND CLAIMS OFFICE, PROFESSIONAL ENGINEERS, SECRETARIES AND STENOGRAPHERS TO EACH OF THE GENERAL MANAGERS, ASSISTANT GENERAL MANAGER, DIRECTORS, MANAGERS, STUDENTS EMPLOYED DURING THEIR SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (567 EMPLOYEES IN THE UNIT).

16265-69-R: BUTCHER WORKERS EMPLOYEE ASSOCIATION (APPLICANT) V. BEEF TERMINAL LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER #1) V. AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF YORK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (77 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 613).

16346-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WRIGHT ASSEMBLIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATHROY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (67 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT EMPLOYEES IN THE DRAFTING AND ENGINEERING DEPARTMENT ARE INCLUDED IN THE TERM "OFFICE STAFF".

16354-69-R: OPTICAL AND PLASTIC TECHNICIANS & ALLIED WORKERS, UNION LOCAL 67 OF U.H.C. & M.W.I.U.-C.L.C. (APPLICANT) V. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT #90-92 SHERBOURNE STREET, TORONTO, IN ITS LENS INSPECTION DEPARTMENT, STATIONARY DEPARTMENT, AND TONERAY DEPARTMENT, SAVE AND EXCEPT FOREMEN AND FORELADIES, THOSE ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16427-69-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT) V. ALLARD CONSTRUCTION OF ONTARIO LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSA-GAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16435-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BRUCE MUNICIPAL TELEPHONE SYSTEM (RESPONDENT).

UNIT: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS TELEPHONE SYSTEM IN BRUCE COUNTY, SAVE AND EXCEPT SECRETARY OF THE SYSTEM AND PERSONS ABOVE THE RANK OF SECRETARY OF THE SYSTEM." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16445-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. THE OTTAWA YOUNG MEN'S AND YOUNG WOMEN'S CHRISTIAN ASSOCIATION (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 127 METCALFE STREET, OTTAWA 3, 133 METCALFE STREET, OTTAWA 3, AND 200 LOCKHART STREET, OTTAWA, SAVE AND EXCEPT PROFESSIONAL STAFF, OFFICE STAFF, DEPARTMENT MANAGERS, PHYSICAL INSTRUCTORS, GRADUATE DIETITIANS, STUDENT DIETITIANS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THOSE EMPLOYEES OF THE RESPONDENT CLASSIFIED AS DESK CLERKS FALL WITHIN THE DESCRIPTION OF OFFICE STAFF AND ARE EXCLUDED FROM THE BARGAINING UNIT.

16446-69-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH CANADIAN LABOUR CONGRESS, AND A.F.L.-C.I.O. (APPLICANT) V. GOSHEN RUBBER OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 633).

16448-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DIRECT LUMBER CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

16455-69-R: NURSES' ASSOCIATION GUELPH GENERAL HOSPITAL (APPLICANT) V. THE BOARD OF COMMISSIONERS OF THE GUELPH GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT ENGAGED IN NURSING CARE AND TEACHING, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (127 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 635).

16456-69-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. BRITISH LEAF TOBACCO COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER, FOREMEN, PERSONS ABOVE THE RANKS OF ASSISTANT CHIEF ENGINEER AND FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SEASONAL EMPLOYEES, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 107." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16457-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NURSE, FIELD ERECTION STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (119 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT INDUSTRIAL ENGINEERS AND QUALITY CONTROL PERSONNEL ARE INCLUDED IN THE OFFICE STAFF.

16458-69-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) V. OTIS PANTS MANUFACTURING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT).

16467-69-R: NURSES' ASSOCIATION SIMCOE COUNTY HEALTH UNIT (APPLICANT) V. SIMCOE COUNTY DISTRICT HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT SAVE AND EXCEPT SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR." (15 EMPLOYEES IN THE UNIT).

16472-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. DOWNSVIEW MEAT MARKET (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS MEAT DEPARTMENT IN ITS RETAIL STORES AT METROPOLITAN TORONTO, SAVE AND EXCEPT OWNER-MANAGERS." (2 EMPLOYEES IN THE UNIT).

16485-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. OSCAR GOODMAN DRUGS CARRYING ON BUSINESS UNDER THE TRADE NAME OF SHOPPERS DRUG MART (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FLOOR MANAGERS, PERSONS ABOVE THE RANK OF FLOOR MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, AND STUDENTS HIRED AND EMPLOYED FOR THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT UNDERGRADUATE PHARMACIST REFERS TO A PERSON WORKING TOWARDS A GRADUATE DEGREE BUT DOES NOT INCLUDE A PHARMACY CLERK.

16486-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. M. GREEN DRUGS CARRYING ON BUSINESS UNDER THE TRADE NAME OF SHOPPERS DRUG MART (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT DUNDAS, SAVE AND EXCEPT FLOOR MANAGERS, PERSONS ABOVE THE RANK OF FLOOR MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, AND STUDENTS HIRED AND EMPLOYED FOR THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT UNDERGRADUATE PHARMACIST REFERS TO A PERSON WORKING TOWARDS A GRADUATE DEGREE BUT DOES NOT INCLUDE A PHARMACY CLERK.

16487-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. M. PERCY SPENCER DRUG CARRYING ON BUSINESS UNDER THE TRADE NAME OF SHOPPERS DRUG MART (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FLOOR MANAGERS, PERSONS ABOVE THE RANK OF FLOOR MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS, OFFICE STAFF, AND STUDENTS HIRED AND EMPLOYED FOR THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT UNDERGRADUATE PHARMACIST REFERS TO A PERSON WORKING TOWARDS A GRADUATE DEGREE BUT DOES NOT INCLUDE A PHARMACY CLERK.

16488-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ALCAN COLONY CONTRACTING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16489-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. T & D CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16492-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. TURE ANDERSON (EASTERN) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF TAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

16494-69-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA - LOCAL 905 (APPLICANT) V. STAR DOLL MANUFACTURING CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (47 EMPLOYEES IN THE UNIT).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT FLOOR-LADIES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF FOREMAN.

16495-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TURE ANDERSON (EASTERN) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARIALLY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD NOTES THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE MAINTAINANCE AND REPAIRING OF MACHINERY IN THE RESPONDENT'S SHOP IN BURLINGTON ARE NOT INCLUDED IN THE BARGAINING UNIT.

16496-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TURE ANDERSON (EASTERN) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WELLINGTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16497-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TURE ANDERSON (EASTERN) LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16501-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. TURE ANDERSON (EASTERN) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

16502-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. STARNINO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16503-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. COUNTRY READY-MIX LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STOUFFVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

16505-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ARGO CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANS-
DOWNE, FRONT OF LEEDS AND LANS-
DOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND

THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16506-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN THE MUNICIPALITY OF SHUNIAH, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE CLERK, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16509-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MOHR AND GRABOW LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16511-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. KARL POELL (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16512-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PAUL BISSCHOFF CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

16513-69-R: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (APPLICANT) V. SECURITY FREIGHTWAYS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

16514-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. PISA CONSTRUCTION CO. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (6 EMPLOYEES IN THE UNIT).

16527-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ELRIC CONTRACTORS WALLACEBURG LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16528-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. IVEY-DREGER CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN," (2 EMPLOYEES IN THE UNIT).

16529-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. SOGELA INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16533-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PISA CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16539-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. WILLIAM ALFRED ELLIS JR. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDUGALL, COWPER, FOLEY AND CONGER IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16542-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. GEORGE LEROUX (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDUGALL, COWPER, FOLEY AND CONGER IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16543-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (APPLICANT) V. WILLIAM ELLIS SR. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDUGALL, COWPER, FOLEY AND CONGER IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16544-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. YONG'S CONSTRUCTION & SUPPLY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDUGALL, COWPER, FOLEY AND CONGER IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

16555-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. PERMANENT FLOOR LAYING Co., LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16566-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. NORTANNE CONSTRUCTION LIMITED & Co. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN METROPOLITAN TORONTO, THE COUNTRIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16579-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. JOHN HODGSON CONTRACTORS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDougall, Cowper, Foley and Conger in the District of Parry Sound, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

16593-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. DICKIE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

16208-69-R: THE CANADIAN UNION OF BASE METAL WORKERS (C.N.T.U.) (APPLICANT) V. NORANDA MINES LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT ITS GECO DIVISION MINE AND PLANT IN THE MANITOUWADGE AREA OF ONTARIO, SAVE AND EXCEPT: SHIFT BOSSES, FOREMEN, PERSONS ABOVE THE RANK OF SHIFT BOSS OR FOREMAN, OFFICE STAFF, CLERICAL EMPLOYEES OF THE ACCOUNTING DEPARTMENT, EMPLOYEES IN THE ENGINEERING AND GEOLOGICAL DEPARTMENTS, CHIEF CHEMIST, ASSISTANT CHIEF CHEMIST, FIRE ASSAYER, ASSAYERS, FIRE CHIEF, SECURITY GUARDS AND STUDENTS HIRED FOR THE SCHOOL SUMMER VACATION PERIOD, AND THE EMPLOYEES SPECIFIED IN THE CERTIFICATION OF OPERATING ENGINEERS, LOCAL 865." (425 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		383
NUMBER OF PERSONS WHO CAST BALLOTS	366	
NUMBER OF SPOILED BALLOTS	2	
BALLOTS SEGREGATED AND NOT COUNTED	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	204	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	156	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15971-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V.
SPURRELL'S I.G.A. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN LONDON
REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS
EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

NO VOTE CONDUCTED

15823-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE
CORPORATION OF THE TOWNSHIP OF MARKHAM (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

(SEE INDEXED ENDORSEMENT PAGE 592).

16006-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 (APPLICANT) V. BYERS OIL BURNER SERVICE (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 595).

16069-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183, (ROCK AND TUNNEL WORKERS DIVISION) (APPLICANT) V. KIDD COPPER
MINES LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA
(INTERVENER). (40 EMPLOYEES).

16123-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
PROVISIONAL COUNTY OF HALIBURTON (RESPONDENT). (1 EMPLOYEE).

16338-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL UNION
No. 409 (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT).
(135 EMPLOYEES).

16376-69-R: BRICKLAYERS', STONEMASONS' AND TILESETTERS' UNION No. 2,
ONTARIO (AFFILIATED WITH BRICKLAYERS, MASONS AND PLASTERERS' INTER-
NATIONAL UNION OF AMERICA) (APPLICANT) V. P. R. CONNOLLY CONSTRUCTION
LIMITED (RESPONDENT). (38 EMPLOYEES).

16377-69-R: BRICKLAYERS', STONEMASONS' AND TILESETTERS' UNION No. 2,
ONTARIO (AFFILIATED WITH BRICKLAYERS, MASONS AND PLASTERERS' INTER-
NATIONAL UNION OF AMERICA) (APPLICANT) V. NORTH SUMMIT CONSTRUCTION
LIMITED (RESPONDENT). (4 EMPLOYEES).

16378-69-R: BRICKLAYERS', STONEMASONS' AND TILESETTERS' UNION No. 2,
ONTARIO (AFFILIATED WITH BRICKLAYERS, MASONS AND PLASTERERS' INTER-
NATIONAL UNION OF AMERICA) (APPLICANT) V. NELKIN CONSTRUCTION LIMITED
(RESPONDENT). (4 EMPLOYEES).

16380-69-R: BRICKLAYERS', STONEMASONS' AND TILESETTERS' UNION No. 2,
ONTARIO (AFFILIATED WITH BRICKLAYERS, MASONS AND PLASTERERS' INTER-
NATIONAL UNION OF AMERICA) (APPLICANT) V. HARBRIDGE & CROSS LIMITED
(RESPONDENT). (9 EMPLOYEES).

16412-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WATERLOO
METAL STAMPINGS LTD. (RESPONDENT) V. INTERNATIONAL UNION OF DOLL AND
TOY WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).
(40 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 630).

16428-69-R: THE COUNCIL OF CONCRETE FORMING TRADE UNIONS (INT'L.
ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721;
LABOURERS' INT'L. UNION OF NORTH AMERICA, LOCAL 506; LABOURERS' INT'L.
UNION OF NORTH AMERICA, LOCAL 183; OPERATIVE PLASTERERS' AND CEMENT
MASONS' INT'L. ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172;
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190; AND
INT'L. UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANTS) V. AGU -
FORMING LIMITED (RESPONDENT). (57 EMPLOYEES).

16453-69-R: RETAIL CLERKS LOCAL No. 409 CHARTERED BY RETAIL CLERKS
INTERNATIONAL ASSN. (APPLICANT) V. MACDONALDS CONSOLIDATED LIMITED
(RESPONDENT). (23 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 634).

16526-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. TOR-WIN CONSTRUCTION (RESPONDENT). (4 EMPLOYEES).

16545-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. KUZMAS CONSTRUCTION Co. LTD. (RESPONDENT). (29 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

16223-69-R: LOCAL UNION No. 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. -C.I.O. -C.L.C. (APPLICANT) V. MILLER'S ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

16282-69-R: RETAIL STORE EMPLOYEES UNION LOCAL No. 832 (APPLICANT) V. SILVER LAKE BEVERAGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KENORA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	7

16437-69-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE LISTOWEL MEMORIAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (5 EMPLOYEES IN THE UNIT).

UNIT: "ALL STATIONARY ENGINEERS, PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT LISTOWEL, SAVE AND EXCEPT THE BUILDING SUPERINTENDENT AND PERSONS ABOVE THE RANK OF BUILDING SUPERINTENDENT."

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

16387-69-R: BRICKLAYERS', STONEMASONS' AND TILESETTERS' UNION No. 2, ONTARIO (AFFILIATED WITH BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA) (APPLICANT) V. F. W. MACLACHLAN LIMITED (RESPONDENT). (7 EMPLOYEES).

16434-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. WESTERN IRON & METAL COMPANY (FORT WILLIAM) LIMITED (RESPONDENT). (2 EMPLOYEES).

16491-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. F. TOCHERI CONSTRUCTION LIMITED (RESPONDENT). (4 EMPLOYEES).

16507-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. ZACHARY DE VUONO LIMITED (RESPONDENT). (40 EMPLOYEES).

16508-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. MEDITERRANEAN CONSTRUCTION (RESPONDENT). (45 EMPLOYEES).

16510-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARROW ELECTRIC (RESPONDENT). (4 EMPLOYEES).

16538-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (APPLICANT) V. JOHN HUDSON CONTRACTORS (RESPONDENT). (2 EMPLOYEES).

16540-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. MERIDIAN DEVELOPERS (RESPONDENT). (2 EMPLOYEES).

16554-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. ACADIAN
ENGINEERING LIMITED (RESPONDENT). (5 EMPLOYEES).

16557-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 (APPLICANT) V. BETTERROADS CONST. CO. LTD. (RESPONDENT). (16 EMPLOYEES).

16623-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
1036 (APPLICANT) V. DEPARTMENT OF PUBLIC WORK, ONTARIO GOVERNMENT
(RESPONDENT). (3 EMPLOYEES).

16552-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(APPLICANT) V. ROYAL HOTEL (RESPONDENT). (20 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING AUGUST

16157-69-R: RUTH PULLMAN AND SHARON SCOTT (APPLICANTS) V. THE INTER-
NATIONAL UNION OF DOLL AND TOY WORKERS OF THE U.S.A. AND CANADA, LOCAL
905 (RESPONDENT) V. STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES
LIMITED. (EMPLOYER). (GRANTED).

UNIT: "ALL EMPLOYEES OF STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES
LIMITED AT ITS STRATHROY PLANT, SAVE AND EXCEPT FOREMEN AND SUPERVISORS,
HOME WORKERS, DRIVERS AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	13

16249-69-R: ROBERT BUZZELL (APPLICANT) V. THE HOTELS, CLUBS, RESTAUR-
ANTS, TAVERNS EMPLOYEES' UNION, LOCAL 261 (RESPONDENT) V. BRUCE MAC-
DONALD MOTOR LODGE (EMPLOYER). (GRANTED).

UNIT: "ALL FULL TIME AND REGULAR PART TIME EMPLOYEES WHO AVERAGE
MORE THAN 24 HOURS PER WEEK OVER A THREE MONTH PERIOD EXCLUDING
STUDENT EMPLOYEES BETWEEN JUNE 15TH AND SEPTEMBER 10TH OF EACH YEAR
WHOSE CLASSIFICATIONS ARE LISTED IN THE SCHEDULES ATTACHED TO A
COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE BRUCE MACDONALD
MOTOR LODGE, DATED JULY 11TH, 1968." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	9

16463-69-R: WILLIAM PARKS (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 880 (RESPONDENT) V. ISLAND OF BOB-LO COMPANY (INTERVENER). (DISMISSED). (14 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 640).

16556-69-R: KENNETH HITCHCOCK (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL No. 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (RESPONDENT) V. LEWIS CARTAGE MOVING AND PARCEL DELIVERY (INTERVENER). (GRANTED). (8 EMPLOYEES).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

AUGUST

16352-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN METAL WORKERS ASSOCIATION (PREDECESSOR TRADE UNION) V. LAKESHORE DIE CASTING LIMITED (EMPLOYER). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 642).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

AUGUST

16624-69-U: WABASSO LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

16186-69-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT) V. SECTION 1

ADAMS, FRANK	DALES, PAUL	HACKING, SAMUEL
ALGUIRE, ROBERT	DELINE, HENRY	HALE, ROBERT
ALTENBURG, JACOB	DEMAREST, ARTHUR	HANNON, TERRENCE
ANDERSON, CLIFFORD	DESROCHES, GERALD	HARRISON, JAMES
ARMSTRONG, GEORGE	DEVITT, KENNETH	HARTJES, TED
ARSENAULT, CLARENCE	DEVLIN, CHARLES	HATTICH, WERNER
ATKINSON, DAVID	DEYETTE, KENNETH	HAZZARD, CLARENCE

BAILEY, CHRISTOPHER
BARCLAY, GEORGE
BAXTER, JEFFERY
BELL, JOHN
BELL, STEPHEN
BENNETT, IVOR
BICKERSTAFFE, LEONARD
BISIECKI, LUCJAN
BJORND AHL, NORMAN
BLACK, GERALD
BLACK, JOSEPH
BLAND, JOSEPH
BOLOTIN, VICTOR
BOWE, GLEN
BOWMAN, JAMES
BRISSON, RALPH
BROWN, WILLIAM
BROWNLIE, BRIAN
BEUHLER, OSKAR
CAMPBELL, PATRICK
CAMPBELL, TED
CARDOZO, ALONZO
CARLISLE, DESMOND
CARLISLE, WILLIAM
CARR, WILLIAM
CARROLL, RONLAD
CASEY, THOMAS
CESARSKI, PETER
CHAMBERS, LEASON
CONNELL, JACK
CONRAD, WILLIAM
CONROY, RAYMOND
CONSTANT, WILLIAM
COOK, JOHN
COSKIE, EUGENE
CREES, DAVID
CURRY, ERNEST
CUTLER, WILLIAM
CZARNIK, WILLIAM

MELOWSKY, STANLEY
MENELY, LESLIE
MENZEL, ERIC
MESZAROS, JOSEPH
MCARTHUR, JACK
McCANN, KENNETH
McCORMACK, THOMAS
McGILL, JOSEPH

DJUKIC, ILIJA
DONOGHUE, MICHAEL
DOWNIE, MICHAEL
DOYLE, LARRY
DRAPER, JOHN
DRASNIN, HERBERT
DUFFIN, ROBERT
DYKEMAN, MARTIN
ELDRIDGE, CHARLES
ENYEDY, EMIL
ENYEDY, JOHN
EVANS, WILLIAM
FERGUSON, NORMAN
FERJO, ARTHUR
FERRIS, THOMAS
FLETCHER, GEORGE
FORTNEY, CHRISTOPHER
FRANCIOLI, AMERIGO
FREW, RONALD
GALIKOWSKI, EDWIN
GALLANT, MORTIMER
GARVEY, PETER
GENDRON, GERALD
GEOFFROY, FRANCIS
GILL, ALBERT
GILLESPIE, MICHAEL
GILROY, WILLIAM
GODFREY, LOUIS
GOJANOVIC, STEPHEN
GOLDTHORP, BRIAN
GRAHAM, MILTON
GRANSJOEN, KJELL
GRANT, ROBERT
GRAY, COLMAN
GREGAN, FREDERICK
GRIBBEN, AUGUSTIN
GRIEVE, JAMES
GRIMMOND, CLAUDE
GUNTER, RICHARD

ROSS, STANLEY
RUDOLPHI, ROLOF
RUMNEY, DONALD
ST. AUBIN, GEORGES
SAS, HENDERIKUS
SAXTON, SIDNEY
SCHAAP, JACOBUS
SEYMOUR, JOHN

HEDGES, ROBERT
HENDERSON, ALEXANDER
HEWITSON, ROBERT
HOFFMAN, GARNET
HOOK, ELMER
HORCSOK, CHARLES
HORNBECK, ROBERT
HOWARD, BARRY
HUGHES, KENNETH
HUNTER, THOMAS
HUSZAR, JOSEPH
IRELAND, IRVIN
JAMES, MALCOLM
JAMES, TERENCE
JURGENEIT, GERHARD
KASZAS, GEORGE
KISCHER, RUDOLF
KNOTT, DESMOND
KOURI, DONALD
KRNIC, VALENTIN
KRUTZKI, FRED
KUK, JOHN
LE BOUTHILLIER, POLYDORE
LEGER, EDMOUR
LEMETTI, RALPH
LIEPELT, ERIC
LOCKETT, PETER
LUMMIS, LAWRENCE
LUTZ, FORD
MACDONALD, WILLIAM
MACLEOD, ALLEN
MACKAY, GORDON
MACPHERSON, DONALD
MARKLE, JOHN
MARKS, RICHARD
MARREN, LEONARD
MARSHALL, JOSEPH
MARSHALL, MERVYN
MARTIN, GLADWYN
MASCITTE, CLAUDIO
WILLIAMSON, THOMAS
WILSON, ARTHUR
WING, LOUIS
WOOD, EDWARD
WORTHING, LLOYD
WYNNE, GEORGE
ZARINS, VIESTURS
ZETZSCHE, WOLFGANG

McKENZIE, ALEXANDER
McKENZIE, BENJAMIN
McLAREN, JOHN
McMILLAN, RONLAD
McNANEY, DOUGLAS
McNEVAN, ARCHIE
McWALTERS, GEORGE
MINES, MAURICE
MITCHELL, THOMAS
MOESKYK, MICHAEL
MOFFITT, GREGORY
MORBACK, NICHOLAS
MORRILL, BRUCE A.
MORRISON, JAMES
MULHALL, JOSEPH
MUIR, THOMAS
MUNRO, HENRY
MURRAY, ALAN
NEWBURN, ROBERT
NICHOLSON, CHARLES
NORRIS, JAMES
NOSEWORTHY, CHESLEY
OATES, WILLIAM
OGILVIE, ALEXANDER
OTTO, JOSEPH
PARKINSON, BASIL
PARLETTE, RONALD
PARROTT, KEVIN
PATERSON, ROBERT
PEARSON, JOHN
PENNER, ELMER
PEREIRA, JAIME
PERRY, EVAN
PHILLIPS, MELBOURNE
PILE, THOMAS
PINE, HARRY
PINI, GINO
POGSON, DAVID
POPOWSKI, WILLIAM
QUAIL, HOWARD
RAE, WILLIAM
RAMER, PAUL
REID, BARRETT
RITCHIE, KENNETH
ROBERTSON, ANGUS
ROBERTSON, GRAHAM
ROOTHAM, KENNETH

SHAH, MASUD
SHAW, WILLIAM
SHEARER, JAMES D.
SHIER, RONALD
SIMONYKA, STEVEN
SINDEN, LESLIE
SINKO, THEODOR
SLOAT, KENNETH
SMIRLE, CYRIL
SMIRLE, ROBERT
SMITH, EDWARD
SMITH, PETER
SMITH, ROBERT
SMOCZYNSKI, STANLEY
STEPHENSON, CECIL
STEVENSON, THOMAS
STEWART, JOHN A.
STORMS, RONALD
STREET, MICHAEL
STRICKLAND, VICTOR
STYLES, LESLIE
SUNTER, RONALD
SYNYARD, GARRY
TAYLOR, EDWARD
TAYLOR, GEORGE
TELFER, ALLAN
THOMPSON, DAVID
THOMPSON, WILLIAM
THORNTON, JOHN
TIGHE, PATRICK
TRAPPER, WILHELM
TROMBLEY, VERNON
UDROVSKIS, JAMES
URQUHART, DONALD
VAINE, FRED
VAN MEER, STANLEY
VIDENKA, JOSEPH
VINCZE, VIKTOR
WAGNER, DAVID
WALTERS, KENLOCK
WALTON, ERIC
WATTERS, JOSEPH
WHITE, JOHN
WILKINSON, RUSSELL
WILLIAMS, JAMES
WILLIAMS, ROBERT
WILLIAMSON, MICHAEL

SECTION 2

AUERSWALD, ARMIN
BARRIAGE, RONALD
BUSHE, WILLIAM
CASSANOVA, RADMOND
DOUCETT, EDMOND
DURKIN, MICHAEL
DAL PASSO, GUISEPPE HALFON
HAYLES, ROY
KELMAN, MICHAEL
MCDOWELL, ALEX
MOORE, JOHN
MUELLER, WALTER
PLEAU, RONALD
POLIQUIN, ROBERT
PRISAS JUOZAS
QUESNEL, MARC
ROBBINS, HARRY
SHEDDEN, ALAN
TENNEY, VICTOR
TYMCHUK, DANIEL
UMPHREY, JOHN
WEBSTER, GEORGE

SECTION 3

BELL, PATRICK
DESIMONE, MARIO

RESPONDENTS.

(GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 643).

16482-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ELGIN COUNTY BOARD OF EDUCATION (RESPONDENT). (WITHDRAWN).

16531-69-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BOT CONSTRUCTION LIMITED, UGO GAIARDO AND STEVE MESZARUS (RESPONDENTS). (WITHDRAWN).

16585-69-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ROBERT McALPINE LTD. (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING AUGUST

16174-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. MANIS METAL MANUFACTURING LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 645).

16175-69-U: AMALGAMATED MEAT CUTTERS AND BUTCHERMEN OF NORTH AMERICA (COMPLAINANT) V. FIORENTINO PRODUCERS, LTD. (RESPONDENT). (WITHDRAWN).

16196-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 649).

16266-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. INDAL-PRIME LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 652).

16322-69-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) V. BROADVIEW POULTRY FARMS, LTD. (RESPONDENT). (WITHDRAWN).

- AND -

16370-69-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) V. BROADVIEW POULTRY FARMS, LTD. (RESPONDENT). (WITHDRAWN).

16341-69-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 895, SUDBURY, ONT. (COMPLAINANT) V. MRS. A. MITTLESTEADT, CLEANING CONTRACTOR (RESPONDENT). (WITHDRAWN).

16350-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. MANIS METAL MANUFACTURING LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 654).

16364-69-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 647 (COMPLAINANT) V. BRANTOX HOLDINGS LIMITED (RESPONDENT). (WITHDRAWN).

16398-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. GRAY'S DEPARTMENT STORES LIMITED (RESPONDENT). (WITHDRAWN).

16399-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. VENDO VEN PAR VENDING EQUIPMENT SALES LTD. (RESPONDENT). (WITHDRAWN).

16410-69-U: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210 AFFILIATED A.F. OF L, C.I.O. & C.L.C. (COMPLAINANT) V. CANADIANNA NURSING HOME LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 658).

16429-69-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. DRAGON INVESTMENT (PREMIUM FOREST PRODUCTS) (RESPONDENT). (WITHDRAWN).

16432-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. VENDO VEN PAR VENDING EQUIPMENT SALES LTD. (RESPONDENT). (WITHDRAWN).

- AND -

16475-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. VENDO VEN PAR VENDING EQUIPMENT SALES LTD. (RESPONDENT). (WITHDRAWN).

16443-69-U: J.P. SULLIVAN (COMPLAINANT) V. DUPLATE CANADA LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 661).

16466-69-U: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. COLLINS CARTAGE AND STORAGE COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

16500-69-U: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 47 (COMPLAINANT) V. ECONO HEATING (OTTAWA) LTD. (RESPONDENT). (WITHDRAWN).

16547-69-U: ANDRE V. LAUZON {COMPLAINANT} V. CONSOLIDATED TRUCK
LINES LIMITED (RESPONDENT). {DISMISSED}.

(SEE INDEXED ENDORSEMENT PAGE 662).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

16469-69-M: BOYLES INDUSTRIES LIMITED (COMPANY) AND UNITED STEELWORKERS
OF AMERICA AND ITS LOCAL 7339 (TRADE UNION). (GRANTED).

16517-69-M: CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C. ONTARIO HYDRO
EMPLOYEES' UNION, LOCAL 1000 (TRADE UNION) AND THE HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO (COMPANY). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING AUGUST

15877-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ELGIN
COUNTY BOARD OF EDUCATION (RESPONDENT). DISMISSED).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY-
TREASURER, AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	15

16268-69-M: RETAIL CLERKS UNION LOCALS NO. 206 AND 486 CHARTERED BY
THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANTS) V. SUPER
CITY DISCOUNT FOODS LIMITED; LOBLAW GROCETERIAS CO. LIMITED; UNION
OF CANADIAN RETAIL EMPLOYEES (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 666).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

AUGUST

13761-67-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO
EMPLOYEES UNION, LOCAL 1000 (APPLICANT) V. THE HYDRO-ELECTRIC POWER
COMMISSION OF ONTARIO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 669).

14586-68-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 677).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

16421-69-M: TEAMSTERS INTERNATIONAL UNION LOCAL 990 (TRADE UNION) V. LAKEHEAD FREIGHTWAYS LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 679).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

15814-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. WORKER'S CO-OP. (RESPONDENT). (DISMISSED).

15815-68-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. WORKER'S CO-OP. (RESPONDENT). (DISMISSED).

16109-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. RIA CONSTRUCTION LIMITED (RESPONDENT) V. BRICKLAYERS, MASONS & TILESETTERS UNION, LOCAL NO. 2 ONTARIO (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 681).

16321-69-R: CANADIAN CONSTRUCTION, BUILDING MAINTENANCE AND GENERAL WORKERS' UNION (N.C.C.L.) (APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT). (REQUEST DENIED).

16395-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE METROPOLITAN TORONTO LIBRARY BOARD (RESPONDENT). (REQUEST DENIED).

16407-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL #1988 (APPLICANT) V. PILLAR CONSTRUCTION LTD. (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS

15823-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF MARKHAM (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: JEFFREY SACK AND W. A. ACTON FOR THE APPLICANT, JOHN P. SANDERSON AND H. C. T. CRISP FOR THE RESPONDENT, M. C. DILLON FOR THE OBJECTORS.

DECISION OF THE BOARD: August 15, 1969.

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2. A HEARING WAS HELD IN THIS MATTER TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JUNE 24TH, 1969.

3. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT "EMPLOYED IN ITS WATER AND SEWAGE OPERATIONS" WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

4. IN SUPPORT OF ITS POSITION, THE APPLICANT RELIED ON CERTAIN EVIDENCE WHICH TENDED TO INDICATE THAT THE EMPLOYEES IN THE RESPONDENT'S WATER AND SEWAGE OPERATIONS SHARED A COMMUNITY OF INTEREST WHICH MADE IT APPROPRIATE FOR THEM TO BARGAIN COLLECTIVELY. THE APPLICANT ALSO REFERRED THE BOARD TO SEVERAL CASES WHERE THE BOARD HAD CERTIFIED A UNION AS BARGAINING AGENT FOR ALL EMPLOYEES OF A MUNICIPALITY IN A NAMED DEPARTMENT. THE APPLICANT ALSO ARGUED THAT IN DETERMINING THE APPROPRIATENESS OF A BARGAINING UNIT UNDER SECTION 6(1) OF THE LABOUR RELATIONS ACT, IT WAS OPEN TO THE BOARD TO FIND THAT THERE COULD BE MORE THAN ONE APPROPRIATE BARGAINING UNIT IN ANY GIVEN CASE. THE APPLICANT THEREFORE CONTENDED THAT ALL IT NEED TO ESTABLISH WAS THAT THE UNIT IT PROPOSED WAS AN APPROPRIATE BARGAINING UNIT.

5. THE RESPONDENT TOOK THE POSITION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT WAS NOT APPROPRIATE. THE RESPONDENT ARGUED THAT THE BARGAINING UNIT SHOULD ALSO INCLUDE THOSE EMPLOYEES EMPLOYED IN THE RESPONDENT'S ROAD DEPARTMENT AND MAINTENANCE GARAGE.

THE BARGAINING UNIT SUGGESTED BY THE RESPONDENT WOULD INCLUDE ALL "OUTSIDE EMPLOYEES". THE RESPONDENT RELIED ON CERTAIN EVIDENCE WHICH TENDED TO SUPPORT ITS POSITION THAT THE EMPLOYEES IN THE LARGER BARGAINING UNIT SHARED A COMMUNITY OF INTEREST WHICH MADE THE LARGER UNIT MORE APPROPRIATE FOR COLLECTIVE BARGAINING.

6. SECTION 6(1) OF THE ACT READS AS FOLLOWS:

UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING, BUT IN EVERY CASE THE UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE AND THE BOARD MAY, BEFORE DETERMINING THE UNIT, CONDUCT A VOTE OF ANY OF THE EMPLOYEES OF THE EMPLOYER FOR THE PURPOSE OF ASCERTAINING THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT.

7. IT IS TO BE NOTED THAT SECTION 6(1) MAKES GRAMMATICAL USE OF THE DEFINITE ARTICLE "THE" RATHER THAN THE INDEFINITE ARTICLE "A" IN REFERENCE TO "THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING".

8. IN THE NORTHERN ELECTRIC COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1969, P. 1263, THE BOARD STATED AS FOLLOWS:

... THE WORDS "THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING" AS USED IN SECTION 6(1) HAVE NEVER BEEN CONSTRUED BY THE BOARD TO MEAN THAT THERE IS ONLY ONE APPROPRIATE BARGAINING UNIT IN EACH CASE. A COMMON EXAMPLE OF THE BOARD'S PRACTICE IN DETERMINING THAT THERE CAN BE MORE THAN ONE APPROPRIATE BARGAINING UNIT IS THE SITUATION WITH RESPECT TO STATIONARY ENGINEERS IN INDUSTRY. A CRAFT BARGAINING UNIT OF STATIONARY ENGINEERS MAY BE REPRESENTED BY A STATIONARY ENGINEERS UNION AND THE REMAINING EMPLOYEES MAY BE REPRESENTED IN AN APPROPRIATE BARGAINING UNIT BY ANOTHER TRADE UNION. ON THE OTHER HAND, IT IS COMMON TO FIND THAT ALL EMPLOYEES INCLUDING THE STATIONARY ENGINEERS ARE INCLUDED IN ONE APPROPRIATE BARGAINING UNIT. SIMILARLY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD MAY BE REPRESENTED IN A SEPARATE APPROPRIATE BARGAINING UNIT OR THEY MAY BE INCLUDED IN AN ALL EMPLOYEE BARGAINING UNIT.

9. IT IS CLEAR FROM THE ABOVE STATEMENT AND FROM THE WORDING OF SECTION 6 OF THE ACT THAT THERE CAN BE MORE THAN ONE APPROPRIATE BARGAINING UNIT IN A PARTICULAR CASE. SUBSECTION (2) OF SECTION 6 OF THE ACT NOT ONLY CONTEMPLATES THAT A CRAFT BARGAINING UNIT IS DEEMED TO BE APPROPRIATE BUT PROVIDES THAT THE BOARD "SHALL NOT BE REQUIRED TO APPLY THIS SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT...." IN OTHER WORDS, IT APPEARS TO BE THE INTENT OF SECTION 6 OF THE ACT THAT JUST BECAUSE A GROUP OF EMPLOYEES MAY FORM AN APPROPRIATE BARGAINING UNIT, THE BOARD MAY LOOK AT ALL THE EVIDENCE AND CHOOSE BETWEEN APPROPRIATE BARGAINING UNITS IN A PARTICULAR CASE. THE GRAMMATICAL USE OF THE DEFINITE ARTICLE "THE" USED IN REFERENCE TO "THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING" IN SECTION 6 OF THE ACT APPEARS TO SUPPORT OUR VIEW THAT WHEN FACED WITH A CHOICE BETWEEN BARGAINING UNITS, THE BOARD MUST CHOOSE WHAT, IN ALL THE CIRCUMSTANCES, IS THE MOST APPROPRIATE BARGAINING UNIT IN THE PARTICULAR CASE. IN MAKING THIS CHOICE, THE BOARD MUST FOLLOW ITS REGULAR PRACTICE AND APPLY ITS USUAL CRITERIA (SEE USARCO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526). THE BOARD SHOULD ALSO TAKE INTO ACCOUNT THE GENERAL PRACTICE IN THE PARTICULAR INDUSTRY AND MAY BE GUIDED BY THE AGREEMENT OF THE PARTIES.

10. THE CASES REFERRED TO BY THE APPLICANT IN WHICH THE BOARD HAD PREVIOUSLY FOUND THAT EMPLOYEES IN A CERTAIN DEPARTMENT OF A MUNICIPALITY WERE APPROPRIATE FOR COLLECTIVE BARGAINING WERE ALL INSTANCES WHERE EITHER THE PARTIES HAD BOTH PROPOSED BARGAINING UNITS IN SIMILAR TERMS OR WHERE THE BOARD SPECIFICALLY NOTED THE AGREEMENT BETWEEN THE PARTIES ON THE DESCRIPTION OF THE BARGAINING UNIT. OFTEN, SUCH BARGAINING UNITS INCLUDE ALL OUTSIDE EMPLOYEES OF THE MUNICIPALITY. IT IS THE BOARD'S USUAL PRACTICE, HOWEVER, TO DESCRIBE BARGAINING UNITS OF OUTSIDE EMPLOYEES OF MUNICIPALITIES IN TERMS OF "ALL EMPLOYEES SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF".

11. HAVING CONSIDERED ALL THE EVIDENCE IN THIS CASE AND THE REPRESENTATIONS OF THE PARTIES AND HAVING TAKEN INTO CONSIDERATION THE CASES REFERRED TO BY THE PARTIES INCLUDING THE DECISION OF THE BOARD DATED JUNE 2, 1969 IN THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT CASE, BOARD FILE 15592-68-R, AND HAVING GIVEN EFFECT TO THE BOARD'S WELL KNOWN AVERSION TO FRAGMENTATION OF APPROPRIATE BARGAINING UNITS, AND APPLYING THE PRINCIPLES REFERRED TO ABOVE, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT WATERWORKS SUPERINTENDENT, ASSISTANT ROADS SUPERINTENDENT, FLEET SUPERINTENDENT, PERSONS ABOVE THE RANKS OF WATERWORKS SUPERINTENDENT, ASSISTANT ROADS SUPERINTENDENT AND FLEET SUPERINTENDENT, OFFICE, CLERICAL AND TECHNICAL STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 19TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. THE APPLICATION IS THEREFORE DISMISSED.

16006-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BYERS OIL BURNER SERVICE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: J. B. WATERMAN, G. GALLAGHER, ROD MCPHERSON FOR THE APPLICANT; ROBERT McCOMB, JOHN BYERS FOR THE RESPONDENT; AND NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: AUGUST 5, 1969.

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2. SUBSEQUENT TO THE ORIGINAL HEARING THE RESPONDENT ALLEGED THAT THERE WERE IRREGULARITIES IN THE MEMBERSHIP CARDS AND/OR RECEIPTS FILED WITH THE BOARD IN THAT ONE OF THE EMPLOYEES DID NOT PAY THE DOLLAR REQUIRED FOR MEMBERSHIP IN THE APPLICANT. AS A RESULT THE BOARD CONDUCTED A FURTHER HEARING INTO THE ALLEGATION OF NON-PAY. THE EMPLOYEE WHO SIGNED THE ALLEGEDLY IMPUGNED MEMBERSHIP CARD TESTIFIED "I DO NOT REMEMBER WHETHER I DID OR DIDN'T PAY THE DOLLAR." IN VIEW OF THIS STATEMENT AND OTHER EVIDENCE, WE ARE OF THE OPINION THAT THE ALLEGATION OF NON-PAY HAS NOT BEEN SUBSTANTIATED.

3. HOWEVER, THERE WERE FURTHER FACTS DISCLOSED WHICH AFFECT THE APPLICATION. IT APPEARED THAT THE APPLICANT UNION HAS ARRANGED WITH AN EMPLOYEE OF AN OIL BURNER SERVICE COMPANY TO ORGANIZE OIL BURNER SERVICE MEN INTO A SEPARATE DIVISION OF THE APPLICANT. ACCORDING TO HIS TESTIMONY, HE WAS RESPONSIBLE FOR INITIATING THE ORGANIZATION OF THIS SEGMENT OF THE INDUSTRY. THIS EMPLOYEE THEN RECEIVED INSTRUCTIONS FROM THE UNION IN ALL PHASES OF ORGANIZING INCLUDING OBTAINING MEMBERSHIP AND HAS APPEARED BEFORE THIS BOARD ON VARIOUS APPLICATIONS. HE IS NOT A FULL-TIME UNION ORGANIZER BUT IS PAID BY THE UNION FOR ANY OUT-OF-POCKET EXPENSES INCURRED IN THE ORGANIZATIONAL CAMPAIGN.

4. AT THE SECOND HEARING THIS EMPLOYEE-ORGANIZER VOLUNTARILY TESTIFIED THAT THE RECEIPT REFERRABLE TO THE CONTESTED MEMBERSHIP CARD ALTHOUGH SIGNED BY HIM, WAS INCORRECT BECAUSE ANOTHER EMPLOYEE OF THE RESPONDENT HAD COLLECTED THE MONEY. HE ALSO TESTIFIED THAT THE PERSON WHO SIGNED THE FORM 8 WAS NOT MADE AWARE OF THE DEFECTIVE RECEIPT ALTHOUGH INQUIRIES HAD BEEN MADE.

5. THIS BOARD HAS TREATED DEFECTIVE OR IMPROPER RECEIPTS AS DEFECTS IN THE MEMBERSHIP EVIDENCE. SEE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS CONTINENTAL LOCAL 245 AND THE CONTINENTAL PAPER PRODUCTS LIMITED AND OTTAWA PAPER PRODUCTS WORKERS UNION, C.C.L. 55 CLLC 1531 (OLRB); LOCAL 240 OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS AND UPPER CANADA MINES LIMITED AND UNITED STEELWORKERS OF AMERICA, CIO-CCL. 53 CLLC 1444 (OLRB). THE BOARD HAS ALSO INSISTED ON THE HIGHEST STANDARDS OF INTEGRITY ON THE PART OF THOSE SUBMITTING MEMBERSHIP EVIDENCE AND HAS STATED THAT FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGH HEAVILY AGAINST AN APPLICANT. CANADIAN METAL WORKERS' UNION DIVISION 108-NATIONAL COUNCIL OF CANADIAN LABOUR AND WEBSTER AIR EQUIPMENT COMPANY LTD. AND UNITED STEELWORKERS OF AMERICA. 58 CLLC 1716 (OLRB). IN WEBSTER AIR EQUIPMENT THE BOARD HOWEVER DISTINGUISHED BETWEEN TWO TYPES OF CASES (1) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION AND (2) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF THE APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. IT FURTHER STATED IN THAT CASE; AT P. 1718

'THAT, EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS.'

APPLYING THESE CONSIDERATIONS IN THIS CASE WE FIND THAT THERE IS NO IMPROPRIETY IN THE FORM 8 SUBMITTED BY THE APPLICANT.

WE FURTHER FIND THAT THE EMPLOYEE-ORGANIZER IN THIS CASE DOES NOT HOLD THE POSITION OF A RESPONSIBLE OFFICER OR OFFICIAL OF THE APPLICANT, AND THAT HE IS A SUPPORTER OR CANVASSER WHO FALLS WITHIN THE SECOND BRANCH OF THE WEBSTER RULE, AND ACCORDINGLY THE MEMBERSHIP CARD WITH THE DEFECTIVE RECEIPT IS DISALLOWED.

THE QUESTION THEN ARISES AS TO THE WEIGHT TO BE GIVEN TO THE REMAINING MEMBERSHIP EVIDENCE. THERE ARE A NUMBER OF FACTORS WHICH MILITATE AGAINST THE APPLICANT. THE FIRST IS THE EMPLOYEE-ORGANIZER'S KNOWLEDGE AND EXPERIENCE. WHILE HE IS A SUPPORTER OR CANVASSER HE HAS CERTAIN EXPERIENCE AND TRAINING AND HAD A RESPONSIBILITY FOR ORGANIZING BEYOND HIS IMMEDIATE PLACE OF EMPLOYMENT. NOT ONLY WAS HE ENTRUSTED WITH ORGANIZING A SEGMENT OF AN INDUSTRY BUT, AS STATED, HE HAS ATTENDED BEFORE THIS BOARD ON NUMEROUS APPLICATIONS WHERE MEMBERSHIP EVIDENCE HAS BEEN DISCUSSED. IN UNITED STEELWORKERS OF AMERICA V. SLOUGH ESTATES LIMITED 1965 JUNE OLRB MTHLY. REP. 173 ONE OF THE FACTORS THAT THE BOARD CONSIDERED IN REJECTING THE EVIDENCE OF MEMBERSHIP WAS THAT THE EMPLOYEE-ORGANIZER WAS "GIVEN FULL RESPONSIBILITY FOR THE ORGANIZING CAMPAIGN AND THE SIGNING UP OF EMPLOYEES IN THE UNION." SEE ALSO RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC V. DOMINION STORES LIMITED 1964 DEC. OLRB MTHLY. REP. 447; COMPARE THE SLOUGH ESTATES CASE, SUPRA WITH INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. V. ATOMOTIVE PRODUCTS 1967 JAN. OLRB MTHLY. REP. 767. IN THE SLOUGH ESTATES CASE THE RESPONSIBILITY ONLY EXTENDED TO THE EMPLOYEE-ORGANIZER'S PLACE OF EMPLOYMENT AND THUS THE RESPONSIBILITY IN THIS CASE IS FAR GREATER. IN ADDITION, THE OMISSION BY THIS EMPLOYEE-ORGANIZER TO ADVISE THE UNION OF THE IMPROPER RECEIPT AND HIS SUBSEQUENT FAILURE TO ALSO ADVISE THE BOARD AT THE FIRST HEARING WHEN HE WAS PRESENT, MUST WEIGH AGAINST ACCEPTING THE REMAINING EVIDENCE OF MEMBERSHIP WHERE THIS EMPLOYEE-ORGANIZER IS THE COLLECTOR.

HAVING REGARD TO ALL THE EVIDENCE AND BECAUSE THE EMPLOYER-ORGANIZER IS THE ONLY COLLECTOR THE APPLICATION IS DISMISSED.

16026-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L.V. PATHE, FOR THE APPLICANT;
MICHAEL GORDON, FRANK BRIDGE FOR THE RESPONDENT; AND NO ONE
APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: August 28, 1969.

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2. HAVING CAREFULLY CONSIDERED ALL OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JUNE 17TH 1969 AS IT APPLIED TO EACH OF THE PERSONS CONCERNED, AND THE REPRESENTATION OF THE PARTIES AT THE HEARING OF THE BOARD WITH RESPECT TO THE REPORT, WE FIND THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS MEAT DEPARTMENT HEADS DO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

3. THE BOARD FURTHER FINDS THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HAMILTON, SAVE AND EXCEPT MEAT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 25TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER P.J. O'KEEFFE: August 28, 1969.

ON ALL THE EVIDENCE I FIND THAT THE MEAT DEPARTMENT HEADS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT AND SHOULD BE INCLUDED IN THE BARGAINING UNIT.

16039-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L.V. PATHE, FOR THE APPLICANT;
MICHAEL GORDON, FRANK BRIDGE FOR THE RESPONDENT; AND NO ONE
APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF H.D. BROWN, VICE-CHAIRMAN: August 28, 1969.

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2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES AT THE HEARING OF THE BOARD TO CONSIDER THE REPORT, THE BOARD FURTHER FINDS THAT THOSE EMPLOYEES OF THE RESPONDENT CLASSIFIED AS PRODUCE MANAGERS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

3. THE BOARD FURTHER FINDS ON THE BASIS OF ALL THE EVIDENCE THAT THOSE EMPLOYEES CLASSIFIED BY THE RESPONDENT AS HEAD CASHIERS ARE EMPLOYED IN A CONFIDENTIAL CAPACITY RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT HAMILTON SAVE AND EXCEPT ASSISTANT STORE MANAGERS, HEAD CASHIERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGERS AND HEAD CASHIER, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 25TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P.J. O'KEEFFE:

AUGUST 28, 1969.

WHILE I CONCUR WITH THE DECISION TO INCLUDE IN THE BARGAINING UNIT THOSE EMPLOYEES CLASSIFIED BY THE RESPONDENT AS PRODUCE MANAGERS, ON THE BASIS OF ALL THE EVIDENCE BEFORE THE BOARD I FIND THAT THE HEAD CASHIER IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF THE ACT AND SHOULD THEREFORE BE INCLUDED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

AUGUST 28, 1969.

I DISSENT. HAVING REGARD TO THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES, I WOULD HAVE FOUND THAT THE PRODUCE DEPARTMENT HEADS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

IN ADDITION, WHILE I AM IN AGREEMENT THAT THE HEAD CASHIERS SHOULD BE EXCLUDED BECAUSE THEY ARE EMPLOYED IN A CONFIDENTIAL CAPACITY RELATING TO LABOUR RELATIONS, I WOULD ALSO HAVE FOUND THAT THEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

16073-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BELL FUEL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: R. KOSKIE FOR THE APPLICANT; WM. COOK AND W. PAGE FOR THE RESPONDENT; WILLIAM WOERL AND BRIAN MCKITTERICK FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
O. HODGES: AUGUST 1, 1969.

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2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN, DATED THE 9TH DAY OF JUNE, 1969, AND THE SUBMISSIONS OF THE PARTIES WITH RESPECT THERETO MADE BEFORE THE BOARD ON JULY 7TH, 1969, THE BOARD FINDS THAT BRIAN MCKITTERICK DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THAT HE SHOULD BE INCLUDED IN THE BARGAINING UNIT.

3. A REVIEW OF A NUMBER OF DECISIONS ISSUED BY THE BOARD INVOLVING OIL BURNER SERVICEMEN INDICATE THAT THE UNITS ARE DESCRIBED AS ALL EMPLOYEE UNITS EXCLUDING ALL EMPLOYEES OTHER THAN OIL BURNER SERVICEMEN. THIS, ALTHOUGH SOMEWHAT AWKWARDLY EXPRESSED, SIMPLY MEANS THAT IN THOSE INSTANCES THE BOARD FOUND THE OIL BURNER SERVICEMEN TO COMPRISE AN APPROPRIATE BARGAINING UNIT. THE SOMEWHAT ROUNDABOUT WAY OF DESCRIBING THE UNITS STEMS FROM THE BOARD'S RELUCTANCE TO CREATE THE IMPRESSION THAT IT HAS FOUND THAT THE SERVICEMEN CONSTITUTE A GROUP OR CRAFT WITHIN THE MEANING OF SECTION 6.2 OF THE ACT.

4. THE BOARD HEREIN FINDS THAT THE SERVICEMEN COMPRISE AN APPROPRIATE UNIT. IT WOULD ALSO POINT OUT THAT IT FINDS THAT THE APPLICANT HAS NOT ESTABLISHED THAT IT OR THE EMPLOYEES IT REPRESENTS COME WITHIN THE TERMS OF SECTION 6.2 OF THE ACT. (AUTOMATIC FUELS LIMITED, O.L.R.B. APRIL 1968, P.22)

5. KEEPING THESE FINDINGS IN MIND BUT IN THE INTEREST OF BREVITY OF DESCRIPTION IN THIS CASE, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO EMPLOYED AS OIL BURNER SERVICEMEN, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 30, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H.F. IRWIN: August 1, 1969.

1. I DISSENT.

2. THIS IS AN APPLICATION FOR CERTIFICATION FILED WITH THE BOARD ON APRIL 22ND, 1969. NO EVIDENCE OF MEMBERSHIP IN THE APPLICANT UNION IN RESPECT OF THE 7 EMPLOYEES IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT WAS FILED WITH THE APPLICANT.

3. THE APPLICATION WAS PROCESSED BY THE REGISTRAR AND THE TERMINAL DATE WAS FIXED AS APRIL 30TH AND THE HEARING SCHEDULED FOR MAY 8TH.

4. ON MAY 30TH, THE APPLICANT SENT THE BOARD BY REGISTERED MAIL TWO APPLICATION CARDS AND RECEIPTS.
5. A GROUP OF EMPLOYEES FILED AN INTERVENTION IN OPPOSITION TO THE APPLICATION. IT WAS SENT TO THE BOARD ON MAY 30TH BY REGISTERED MAIL.
6. BOTH THE EVIDENCE OF MEMBERSHIP AND THE INTERVENTION ARE, THEREFORE, DEEMED TO BE FILED WITH THE BOARD AS OF MAY 30TH, THE TERMINAL DATE, AND ARE TIMELY.
7. ON MAY 7TH, THE DAY BEFORE THE HEARING, THE APPLICANT SENT A LETTER TO THE BOARD REQUESTING LEAVE TO AMEND THE BARGAINING UNIT OF ALL EMPLOYEES WHICH IT PREVIOUSLY PROPOSED AND SUGGESTED THAT THE BARGAINING UNIT SHOULD CONSIST OF ALL OIL BURNER SERVICE-MEN OF WHICH THERE WERE TWO IN NUMBER. IT IS THESE TWO EMPLOYEES WHO HAD SIGNED THE TWO APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT.
8. AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF BRIAN MCKETTERICK WHO WAS ONE OF THE TWO OIL BURNER SERVICEMEN IN THE NEW BARGAINING UNIT PROPOSED BY THE APPLICANT.
9. ON THE BASIS OF THE EXAMINER'S REPORT, I WOULD FIND THAT THE TWO OIL BURNER SERVICEMEN COMPRISE AN APPROPRIATE BARGAINING UNIT. I ALSO NOTE THAT THE REPORT STATES THAT BRIAN MCKETTERICK VOLUNTARILY LEFT THE EMPLOY OF THE COMPANY ON MAY 21ST.
10. NORMALLY, THE APPLICANT UNION WOULD BE CERTIFIED AS BARGAINING AGENT FOR ALL OIL BURNER SERVICEMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND ABOVE. HOWEVER, AS THE APPLICANT REQUESTED A VERY SUBSTANTIAL CHANGE IN THE BARGAINING UNIT, AS INDICATED ABOVE, I WOULD HAVE DIRECTED THAT A NEW TERMINAL DATE BE FIXED BY THE REGISTRAR AND THAT A NEW POSTING OF NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION (FORM 5) BE MADE BEFORE MAKING A FINAL DECISION IN THIS MATTER.

16094-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: L.V. PATHE FOR THE APPLICANT, M. GORDON AND F. BRIDGE FOR THE RESPONDENT.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER
R.W. TEAGLE. August 11, 1969.

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2. THE BOARD HAS CONSIDERED THE EXAMINER'S REPORT DATED JULY 9TH, 1969 AND THE ORAL REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF JOHN RUSSELL, ARTHUR GATES, CHARLES VASAS AND EDWARD HILL, ALL OF WHOM ARE CLASSIFIED AS MEAT DEPARTMENT HEADS.

3. THE EVIDENCE RELATING TO EACH OF THE FOUR PERSONS CONCERNED IS THE SAME IN ALL ESSENTIAL RESPECTS. RUSSELL AND GATES, HOWEVER, APPEAR TO EXERCISE WIDER AUTHORITY THAN DO VASAS AND HILL. WITH REGARD TO PERSONNEL, ALL HAVE THE AUTHORITY TO HIRE EMPLOYEES FOR THEIR MEAT DEPARTMENTS, ALTHOUGH ONLY RUSSELL HAS DONE SO. ALL EMPLOYEES HIRED ULTIMATELY HAVE TO BE APPROVED BY THE PERSONNEL OFFICE IN TORONTO. THEY ARE ALL RESPONSIBLE FOR TRAINING THEIR OWN PERSONNEL AND MAKE THE WEEKLY WORK SCHEDULES FOR THE EMPLOYEES IN THEIR DEPARTMENTS. THEY SPEND ABOUT HALF THEIR TIME SUPERVISING AND HALF IN WORKING. ALL HAVE THE AUTHORITY TO DISCIPLINE THE EMPLOYEES UNDER THEM AND ALL BELIEVE THEY HAVE THE AUTHORITY TO DISCHARGE EMPLOYEES ALTHOUGH ONLY RUSSELL AND GATES HAVE DONE SO. THEY CAN RECOMMEND MERIT WAGE INCREASE AND ALL BUT HILL HAVE DONE SO. HILL WE WOULD POINT OUT HAS ONLY HELD HIS POSITION FOR FOUR MONTHS. THEY CAN GRANT CASUAL TIME OFF ON THEIR OWN AUTHORITY AND MAKE PROGRESS REPORTS ON THE EMPLOYEES TO THE STORE MANAGER AND SPECIALTY MEAT MAN. WHILE THEY WORK UNDER THE DIRECTION OF THE STORE MANAGER, HE GENERALLY DOES NOT INTERFERE IN THEIR OPERATIONS. THE SUPERVISOR WITH WHOM THEY HAVE THE GREATEST COMMUNICATION IS THE MEAT SPECIALTY MAN IN THE AREA. WHILE THEY MUST OPERATE WITHIN THE GUIDELINES OF A BUDGET AND PRICE LIST, THEY CAN LOWER PRICES ON THEIR OWN INITIATIVE IF THEY HAVE AN OVERSUPPLY OF SOME COMMODITY. THEY ALL DO THE ORDERING, DISPLAYING AND REGULATING OF THE STOCK AND ARE RESPONSIBLE FOR THE GROSS PROFIT OF THEIR DEPARTMENTS.

4. BASED ON THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT ALL OF THE ABOVE FOUR MEAT DEPARTMENT MANAGERS HAVE SUFFICIENT EFFECTIVE CONTROL OVER THE EMPLOYEES IN THEIR DEPARTMENTS AND ARE REQUIRED TO ASSERT A DEGREE OF INDEPENDENT INITIATIVE IN THE EXERCISE OF THEIR RESPONSIBILITIES AS TO BE CLASSIFIED AS MEMBERS OF MANAGEMENT. THE BOARD ACCORDINGLY FINDS THAT JOHN RUSSELL, ARTHUR GATES, CHARLES VASAS AND EDWARD HILL ALL EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD THEREFORE FINDS THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT ST. CATHARINES, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 5TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER E. BOYER: AUGUST 11, 1969.

I AGREE WITH THE MAJORITY THAT JOHN RUSSELL AND ARTHUR GATES EXERCISE MANAGERIAL FUNCTIONS. I DISSENT, HOWEVER, WITH RESPECT TO THE MAJORITY FINDING RELATING TO CHARLES BASAS AND EDWARD HILL. I FIND THAT THE LATTER TWO MEAT DEPARTMENT HEADS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THEREFORE WOULD NOT INCLUDE THEM IN THE BARGAINING UNIT.

16130-69-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. UNIVERSITY OF TORONTO (RESPONDENT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: RAY C. HILDEBRANDT, WATSON E. COOK, BRUCE WETHERALL AND ROBERT W. SYMONS FOR THE APPLICANT; J. PARKER FOR THE RESPONDENT; JAMES N. HUGHES FOR THE INTERVENER; G.M. CALDWELL, RONALD CHRISTISON, JOHN S. RODGERS AND E. NOLAN FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
J.E.C. ROBINSON: AUGUST 1, 1969.

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. MR. G.M. CALDWELL, AN EMPLOYEE OF THE RESPONDENT, APPEARED AT THE HEARING ON BEHALF OF HIMSELF AND A GROUP OF FELLOW EMPLOYEES OF THE RESPONDENT. HE HAD FILED WITH THE BOARD A STATEMENT OF DESIRE WHICH HAD BEEN RETURNED TO HIM BY THE REGISTRAR BECAUSE IT WAS NOT RECEIVED BY THE BOARD UNTIL AFTER THE TERMINAL DATE FIXED FOR THIS APPLICATION, WHICH WAS MAY 9, 1969.

5. THE REGISTRAR MAILED THE NOTICE OF APPLICATION FOR POSTING TO THE EMPLOYER ON FRIDAY, MAY 2, 1969 WITH THE CUSTOMARY ADMONISHING THAT IT BE POSTED IMMEDIATELY.

6. THE EVIDENCE IS THAT THE NOTICE HAD NOT BEEN POSTED BY THE EMPLOYER UNTIL MAY 6, 1969. CALDWELL STATED THAT HE WAS ON SHIFT WORK AT THE TIME AND DID NOT HAVE AN OPPORTUNITY TO READ THE NOTICE UNTIL MAY 7, 1969. HE ARGUED THAT THIS LEFT TOO LITTLE TIME TO TAKE ANY ACTION WITH RESPECT TO THE APPLICATION AMONG OTHER EMPLOYEES WHO WERE ON VARYING SHIFTS.

7. SECTION 1(2) OF THE BOARD'S RULES OF PROCEDURE STATES:

"1(2) WHERE A PERIOD OF TIME IS PRESCRIBED BY THESE RULES AND EXPRESSED AS A NUMBER OF DAYS THE PERIOD SHALL BE COMPUTED AS THE NUMBER OF DAYS EXPRESSED EXCLUSIVE OF HOLIDAYS."

8. THE RELEVANT PORTION OF SECTION 2 OF THE BOARD'S RULES OF PROCEDURE IS AS FOLLOWS:

"2 WHEN AN APPLICATION IS MADE, THE REGISTRAR SHALL FIX A TERMINAL DATE FOR THE APPLICATION WHICH SHALL BE NOT LESS THAN FIVE AND NOT MORE THAN TEN DAYS, AS DIRECTED BY THE BOARD, AFTER,

(B) THE DAY IMMEDIATELY FOLLOWING THE DAY ON WHICH THE REGISTRAR MAILS THE NOTICES OF APPLICATION TO THE EMPLOYER FOR POSTING, WHERE THEY ARE SERVED BY MAIL."

9. ALTHOUGH SECTION 2 DEALS SPECIFICALLY WITH THE FIXING OF THE TERMINAL DATE, IT OBVIOUSLY ALSO CONTEMPLATES THE POSTING OF THE NOTICE OF APPLICATION ON THE DAY AFTER THE DAY FOLLOWING THE DATE OF

MAILING BY THE REGISTRAR. IT FOLLOWS THEN THAT THE RULE PROVIDES FOR EXPOSURE OF THE NOTICE OF APPLICATION FOR ALL TO SEE AND ACT UPON FOR 5 DAYS, INCLUDING THE TERMINAL DATE. IN THE PRESENT CASE, THE NOTICE WAS EXPOSED FOR ONLY 4 DAYS, INCLUDING THE TERMINAL DATE.

10. IN VIEW OF THE FACT THAT THE PERIOD OF POSTING WAS CURTAILED AND, THAT THIS WAS TO THE PREJUDICE OF CALDWELL AND THE EMPLOYEES HE PURPORTED TO REPRESENT, THE BOARD, IN THE CIRCUMSTANCES OF THIS CASE, DIRECTS THE REGISTRAR TO FIX A NEW TERMINAL DATE AND TO ISSUE ALL THE PROPER AND NECESSARY DIRECTIONS AND NOTICES ACCORDINGLY.

DECISION OF BOARD MEMBER O. HODGES: August 1, 1969.

I DISSENT.

1. CALDWELL AND OTHER EMPLOYEES WHO MAY SHARE HIS VIEWS IN OPPOSITION TO THE UNION ALL HAD TIME TO NOTIFY THE BOARD OF THEIR DESIRE.

2. THE PETITION PROCEDURE IS NOT A DEVICE FOR AN OBSTRUCT-
IONIST AGENT PROVOCATEUR TO USE TO ORGANIZE DISSENTERS. THE LABOUR
RELATIONS ACT IS ON THE CONTRARY DESIGNED AND INTENDED TO FACILITATE
THE ACHIEVEMENT OF A COLLECTIVE BARGAINING STATUE BY A UNION.

3. CALDWELL FILED LATE. THE LATE POSTING BY THE EMPLOYER OF
FORM 5 (THE GREEN FORM) MUST NOT BE TAKEN AS AN EXCUSE TO FILE A
PETITION LATE.

4. AS TO PREJUDICE, THE EMPLOYEES WHO JOINED THE UNION ARE
THE ONES WHO ARE REALLY PREJUDICED. THE MAJORITY DECISION TO EXTEND
THE TERMINAL DATE DELAYS THEIR APPLICATION. CALDWELL MAY INDEED BE
ACTING FOR ONLY ONE OR TWO. THE UNION REQUIRED AT LEAST 45%, AND OF
THIS THERE MUST BE EVIDENCE BY WAY OF MEMBERSHIP CARDS AND A \$1.00
PAYMENT.

5. EVEN IF THE UNION HAD BROUGHT TO THE ATTENTION OF THE
BOARD THAT THE NOTICES WERE NOT POSTED ON THE FIRST DAY, AND IF
THE EMPLOYER HAD THEN POSTED ON THE NEXT DAY, THE PETITIONER WOULD,
PRESUMABLY, UNDER THE MAJORITY DECISION, STILL BE ENTITLED TO A NEW
TERMINAL DATE.

6. EMPLOYEES ON VACATION, SICK, LAID OFF, OR ON CERTAIN SHIFT
SCHEDULES, SIMPLY CANNOT BE GUARANTEED A LOOK AT ALL NOTICES FOR
THE SAME LENGTH OF TIME, IF AT ALL.

7. IN VIEW OF THESE REASONS AND BECAUSE THE FIRST INTENT OF THE ACT MUST BE SERVED FIRST, I WOULD NOT HAVE EXTENDED THE TERMINAL DATE IN THIS CASE.

16166-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 452 (APPLICANT) v. THE CORPORATION OF THE CITY OF CORNWALL (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: MARJORIE L. WHITTEN FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: AUGUST 21, 1969.

1. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES ON THE REPORT OF THE EXAMINER DATED JULY 11TH, 1969 WITH REGARD TO THE EMPLOYMENT STATUS OF AGATHE TERRANCE.

2. AGATHE TERRANCE IS CLASSIFIED AS ASSISTANT TO THE CLERK-ADMINISTRATOR AND HAS HELD THAT POSITION FOR TEN YEARS. HER MAIN FUNCTION IS TO ATTEND COUNCIL MEETINGS TO TAKE MINUTES WHICH SHE DICTATES TO HER STENOGRAPHER. SHE TAKES THE MINUTES OF THE COUNCIL MEETINGS ALSO WHEN IT SITS AS A COMMITTEE OF THE WHOLE. IF THE COMMITTEE OF THE WHOLE WISHES TO DISCUSS PRIVATE MATTERS IN CAUCUS SHE IS ASKED TO LEAVE. NO MINUTES ARE TAKEN DURING A CAUCUS. SHE DOES NOT ATTEND MEETINGS OF THE LABOUR RELATIONS COMMITTEE BUT THAT COMMITTEE REPORTS TO THE COMMITTEE OF THE WHOLE. THE MINUTES OF THE COMMITTEE OF THE WHOLE ARE MADE PUBLIC ONCE THEY ARE TYPED. ACCORDING TO THE EVIDENCE, NEGOTIATIONS WITH HOURLY-RATED EMPLOYEES WOULD BE DISCUSSED DURING COMMITTEE OF THE WHOLE MEETINGS BUT THAT FULL DISCUSSION OF SUCH MATTERS WOULD TAKE PLACE IN THE LABOUR RELATIONS COMMITTEE. SHE, IN FACT, LEARNS MORE ABOUT NEGOTIATIONS FROM NEWSPAPERS THAN FROM HER WORK.

3. BASED ON THE ABOVE EVIDENCE, IT WOULD APPEAR THAT NO CONFIDENTIAL MATTERS RELATING TO LABOUR RELATIONS ARE DISCUSSED AT COUNCIL MEETINGS OR MEETINGS OF THE COUNCIL AS A COMMITTEE OF THE WHOLE. IT WOULD SEEM THAT IF SUCH MATTERS ARE DISCUSSED IT WOULD BE IN CAUCUS WHICH IS CLOSED BOTH TO HER AND THE PUBLIC. SINCE THE MINUTES OF THE COUNCIL MEETINGS AND THE COMMITTEE OF THE WHOLE ARE MADE PUBLIC, IT IS DIFFICULT TO APPRECIATE THAT SHE IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. INDEED, HER STATEMENT THAT SHE LEARNED MORE ABOUT LABOUR NEGOTIATIONS FROM THE NEWSPAPERS THAN FROM HER JOB SEEMS TO BE CONFIRMATORY OF THAT FACT.

4. THE STENOGRAPHER WHO WORKS FOR HER IS ESSENTIALLY UNDER THE AUTHORITY OF THE CLERK-ADMINISTRATOR. WHILE HER EVIDENCE IS THAT SHE PERFORMS THE DUTIES OF THE CLERK-ADMINISTRATOR DURING HIS ABSENCE, WHICH AVERAGES EIGHT WEEKS A YEAR, SHE TESTIFIED THAT THE CLERK-ADMINISTRATOR'S DEPUTY ASSUMED AUTHORITY AND MADE ANY DECISIONS, THAT WERE NECESSARY. IN SHORT, IT WOULD APPEAR THAT SHE MERELY PERFORMS THE ROUTINE ADMINISTRATIVE FUNCTIONS OF THE CLERK-ADMINISTRATOR DURING HIS ABSENCE.

5. BASED ON ALL OF THE EVIDENCE, THE BOARD FINDS THAT AGATHE TERRANCE DOES NOT EXERCISE MANAGERIAL FUNCTIONS NOR IS SHE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, SHE IS INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 3 OF THE BOARD'S DECISION OF JUNE 3RD, 1969, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 23RD, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H.F. IRWIN: August 21, 1969.

I DISSENT FROM THE DECISION OF THE MAJORITY TO INCLUDE MRS. AGATHE TERRANCE IN THE BARGAINING UNIT.

MRS. TERRANCE IS ASSISTANT TO THE CLERK-ADMINISTRATOR. SHE HAS HAD TEN YEARS SERVICE WITH THE MUNICIPALITY AND HAS HER OWN PRIVATE SECRETARY. SHE WORKS AT THE TOP MANAGERIAL LEVEL AND HER INCLUSION IN THE BARGAINING UNIT MAY WELL CREATE SERIOUS ADMINISTRATIVE PROBLEMS.

FOR THESE REASONS, I CONSIDER IT INAPPROPRIATE TO INCLUDE MRS. TERRANCE IN THE BARGAINING UNIT AND I WOULD HAVE EXCLUDED HER THEREFROM.

16257-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BRANTOX HOLDINGS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: AUGUST 8, 1969.

. . .

2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF BURGESSVILLE. THE UNIT PROPOSED BY THE RESPONDENT WOULD INCLUDE THE RESPONDENT'S EMPLOYEES LOCATED AT BOTH BURGESSVILLE AND GUELPH.

3. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF PROVIDING MILK TRANSPORTATION SERVICES TO OTHER COMPANIES. THAT IS TO SAY, THE RESPONDENT PROVIDES TRUCKS AND DRIVERS. THE MAIN DEPOT IS IN BURGESSVILLE. IT IS HERE THAT THE COMPANY HAS ITS OFFICES AND THE RECORDS FOR BOTH DEPOTS ARE KEPT IN THIS LOCATION. PAY CHEQUES FOR GUELPH EMPLOYEES ARE SENT TO THE RESIDENT SUPERVISOR AT GUELPH FOR DISTRIBUTION. THERE IS A SUPERVISOR, WHO IS A DRIVER, AT BOTH DEPOTS. THE DISPATCHING IS DONE FROM BURGESSVILLE AND THE NECESSARY DIRECTIVES ARE RELAYED TO GUELPH. THE RESPONDENT HAS TEN TRUCKS AND TWO TRAILERS AT ITS GARAGE IN GUELPH AND TEN TRUCKS AND THREE TRAILERS IN BURGESSVILLE. MAINTENANCE AND SERVICING OF THE VEHICLES ARE DONE IN BURGESSVILLE. AS OF THE DATE OF APPLICATION, TEN DRIVERS WORKED OUT OF THE GUELPH DEPOT AND THIRTEEN OUT OF THE BURGESSVILLE DEPOT.

4. AT THE HEARING IN THIS MATTER, THE RESPONDENT ALLEGED THAT THERE WAS SOME INTERCHANGE OF EMPLOYEES BETWEEN THE TWO DEPOTS. THE BOARD ACCORDINGLY APPOINTED AN EXAMINER TO INQUIRE INTO THE DEGREE OF INTERCHANGE. BASED ON THE INFORMATION PROVIDED TO THE EXAMINER, WHICH WAS AGREED UPON BY THE PARTIES, THERE HAS BEEN ONLY ONE INSTANCE OVER THE PAST YEAR WHERE AN EMPLOYEE HAS BEEN TRANSFERRED FROM ONE DEPOT TO THE OTHER TO RELIEVE FOR A VACATION PERIOD. FURTHER, THERE WOULD APPEAR TO BE NO INTERCHANGE OF EMPLOYEES IN THE EVENT OF ILLNESS. RATHER, THE ROUTES ARE ADJUSTED TO DEAL WITH THIS CONTINGENCY. THERE IS EVIDENCE THAT ONE EMPLOYEE FOR A PERIOD OF TWO MONTHS HAS BEEN ON A ROUTE COVERING TORONTO AND GUELPH BUT RETURNING TO BURGESSVILLE. ANOTHER EMPLOYEE GENERALLY LOCATED AT GUELPH ON OCCASION DRIVES TRUCKS FROM GUELPH TO BURGESSVILLE FOR REPAIRS AND TAKES THEM BACK AGAIN TO THE GUELPH DEPOT. NEITHER OF THE TWO AFOREMENTIONED SITUATIONS CONSTITUTES AN INTERCHANGE OF EMPLOYEES. IN SHORT, THERE IS VIRTUALLY NO INTERCHANGE OF EMPLOYEES BETWEEN THE RESPONDENT'S DEPOTS AT BURGESSVILLE AND GUELPH.

5. IT IS NOT THE BOARD'S PRACTICE TO INCLUDE EMPLOYEES IN WIDELY SEPARATED LOCALITIES IN THE SAME BARGAINING UNIT UNLESS THERE ARE COMPELLING REASONS FOR DOING SO, SUCH AS A REGULAR INTERCHANGE OF EMPLOYEES (SEE WITTICH'S BREAD LIMITED CASE, OLRB M.R. JAN. 1969 1019). THE FACT THAT AN EMPLOYER'S OPERATIONS ARE ADMINISTERED FROM ONE MUNICIPALITY FOR EMPLOYEES LOCATED IN ANOTHER MUNICIPALITY HAS NOT BEEN CONSIDERED SUFFICIENT REASON TO INCLUDE ALL OF THE EMPLOYEES IN A SINGLE UNIT. WE NOTE THAT IN THIS CASE THERE IS SEPARATE SUPERVISION AT EACH DEPOT. IN ALL THE CIRCUMSTANCES, AND HAVING PARTICULAR REGARD TO THE ABSENCE OF ANY REGULAR INTERCHANGE OF EMPLOYEES, WE FIND THAT THE UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF BURGESSVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THERE ARE THIRTEEN EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR EIGHT OF THESE THIRTEEN EMPLOYEES. TWO STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION, ONE BEARING THE SIGNATURES OF FIVE EMPLOYEES AND THE OTHER BEARING THE SIGNATURES OF TEN EMPLOYEES ALL PURPORTING TO BE EMPLOYEES OF THE RESPONDENT, WERE FILED WITH THE BOARD. OF THAT NUMBER ONE IS CLAIMED IN MEMBERSHIP BY THE APPLICANT. IF THE BOARD WERE TO GIVE WEIGHT TO THE PETITIONS THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE FOR LESS THAN THE FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT REQUIRED FOR OUT-RIGHT CERTIFICATION.

8. HAVING REGARD TO THE EVIDENCE AS TO THE ORIGATION, PREPARATION AND CIRCULATION OF THE PETITION WHICH BEARS THE SIGNATURE OF THE EMPLOYEE CLAIMED IN MEMBERSHIP BY THE APPLICANT, THE BOARD FINDS THAT THE PETITION SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT AS TO CAUSE THE BOARD TO DIRECT THE TAKING OF A REPRESENTATION VOTE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 13TH, 1969,

THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER F.W. MURRAY: AUGUST 8, 1969.

1. I DISSENT FROM THE MAJORITY DECISION. THE APPLICANT SOUGHT A BARGAINING UNIT OF ALL EMPLOYEES OF THE RESPONDENT AT BURGESSVILLE, WITH THE USUAL EXCLUSIONS, INCLUDING PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND THIS UNIT INCLUDED 13 EMPLOYEES OF THE RESPONDENT.

2. THE RESPONDENT ALSO EMPLOYED 10 EMPLOYEES AT GUELPH, AND I AM OF THE OPINION THAT IN VIEW OF THE EVIDENCE CONCERNING THE GENERAL OPERATION OF THESE TWO "DEPOTS", THE BOARD SHOULD FIND THAT THE TWO DEPOTS COMPRISE ONE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD HAS CONSIDERED CERTAIN TESTS IN THE PAST TO BE APPLIED IN ORDER TO DETERMINE THE GEOGRAPHIC SCOPE OF THE BARGAINING UNIT. THESE TESTS WERE CLEARLY OUTLINED IN THE USARCO LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1967, PAGE 526. ON PAGE 529 THE BOARD SAID:

SOME OF THE FACTORS WHICH THE BOARD TAKES INTO CONSIDERATION WHICH DETERMINE THE APPROPRIATENESS OF BARGAINING UNITS, WHICH INCLUDE EMPLOYEES AT MORE THAN ONE LOCATION MAY BE ENUMERATED AS FOLLOWS:

1. COMMUNITY OF INTERESTS OF EMPLOYEES;
2. CENTRALIZATION OF MANAGERIAL AUTHORITY;
3. THE ECONOMIC FACTOR OF ONE BARGAINING UNIT;
4. SOURCE OF WORK.

WHEN ALL OF THESE FACTORS HAVE BEEN TAKEN INTO CONSIDERATION, THE BOARD IS ABLE TO DETERMINE WHETHER OR NOT THERE IS AN INTEGRATED OPERATION WHICH INDICATES THE APPROPRIATENESS OF ONE INCLUSIVE BARGAINING UNIT.

4. FROM THE EVIDENCE BEFORE US IN THE INSTANT CASE, I AM OF THE OPINION THAT THERE IS AMPLE EVIDENCE SO AS TO CONCLUDE THAT THERE IS AN INTEGRATED ASSIGNMENT OF WORK, HAVING REGARD TO THE "SOURCE OF WORK" AND THAT GENERALLY THERE IS SUFFICIENT INTERCHANGE OF WORK ASSIGNMENT BETWEEN THE EMPLOYEES IN THE GUELPH AND BURGESSVILLE LOCATIONS SO THAT THERE IS CLEARLY NOT ONLY A COMMUNITY OF INTERESTS BETWEEN THE TWO GROUPS, BUT SIMILAR ECONOMIC FACTORS. CERTAINLY ANY SEPARATION CAN ONLY RESULT IN DISPUTES CONCERNING THE ASSIGNMENT OF WORK AS IT MAY BE AFFECTED BY THE SENIORITY OF THE EMPLOYEES.

5. CERTAINLY IT IS THE BOARD'S PRACTICE NOT TO INCLUDE EMPLOYEES IN WIDELY SEPARATED LOCALITIES IN THE SAME BARGAINING UNIT UNLESS THERE ARE COMPELLING REASONS FOR SO DOING, HOWEVER, I AM OF THE OPINION THAT THE BOARD MUST EXAMINE VERY CAREFULLY, PARTICULARLY IN CASES INVOLVING A UNIT OF EMPLOYEES ENGAGED IN TRANSPORTATION SERVICES WHERE BY THE VERY NATURE OF THE WORK EMPLOYEES ARE REQUIRED TO TRAVEL BETWEEN LOCALITIES, THE EVIDENCE CONCERNING INTERCHANGE AND OTHER EVIDENCE GOING TO THE TESTS AS OUTLINED IN THE USARCO CASE.

6. IN SEVERAL CASES WHERE THE BOARD HAS INCLUDED TWO SEPARATED LOCALITIES IN THE APPROPRIATE BARGAINING UNIT, THE BOARD HAS FOUND A DIFFERENT TYPE OF INTERCHANGE IN UNITS INVOLVING TRANSPORTATION SERVICES THAN THE TYPE OF INTERCHANGE FOUND IN MANUFACTURING PLANTS LOCATED IN SEPARATED LOCALITIES. FOR EXAMPLE: IN TRANSPORTATION SERVICES AN EMPLOYEE FROM ONE LOCALITY MAY TEMPORARILY PERFORM THE JOB, OR PART OF THE JOB, OF AN EMPLOYEE LOCATED IN A DIFFERENT LOCALITY, AND STILL COMMENCE AND CONCLUDE HIS DAY'S WORK IN THE COMMUNITY IN WHICH HE IS REGULARLY ASSIGNED. SUCH SHIFTING OF WORK ASSIGNMENT IS, IN MY OPINION, A FORM OF INTERCHANGE OF WORK AND OF EMPLOYEES AND THE EVIDENCE SUBMITTED TO THE BOARD IN THIS CASE WOULD CLEARLY INDICATE THAT SUCH INTERCHANGE TAKES PLACE.

7. THERE HAVE BEEN A NUMBER OF CASES WHERE THIS BOARD HAS GRANTED MULTIPLE LOCALITY UNITS, ALBEIT THESE INVOLVED AGREEMENT OF THE PARTIES OR DISPLACEMENT. THE FOLLOWING ARE SOME EXAMPLES:

ROYAL OAKS DAIRY LIMITED
BOARD FILE No. 13338-67-R

CURRAN & BRIGGS READY MIX LIMITED
BOARD FILE No. 13680-67-R

WILLIAM L. BARNES COMPANY LIMITED
BOARD FILE No. 13572-67-R

TEESWATER CREAMERY LIMITED
BOARD FILE No. 9465-64-R

WESTON BAKERIES LIMITED
BOARD FILE No. 12181-66-R

BERTRAND & FRERE CONSTRUCTION Co. LTD.
BOARD FILE No. 10347-65-R

8. I AM OF THE OPINION THAT THE BOARD, IN MAINTAINING SEPARATE BARGAINING UNITS IN SEPARATED LOCALITIES, PARTICULARLY WHERE THERE IS EVIDENCE OF INTEGRATED WORK ASSIGNMENT, WILL ONLY DEVELOP AND ENCOURAGE FRAGMENTED BARGAINING UNITS WITH THE INEVITABLE DISPUTES THAT SUCH FRAGMENTATION WILL ENDOW.

9. IN VIEW OF THE EVIDENCE IN THIS CASE, I WOULD HAVE FOUND THE APPROPRIATE BARGAINING UNIT TO BE: ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF BURGESSVILLE AND GUELPH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

10. THEREFORE, I WOULD HAVE FOUND THAT ON THE BASIS OF THE EVIDENCE SUBMITTED BY THE APPLICANT, THAT THERE WAS LESS THAN 45% OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WHO WERE MEMBERS OF THE APPLICANT AND ACCORDINGLY I WOULD HAVE DISMISSED THIS APPLICATION.

16265-69-R: BUTCHER WORKERS EMPLOYEE ASSOCIATION (APPLICANT) V. BEEF TERMINAL LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER #1) V. AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (INTERVENER #2).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON. AUGUST 29, 1969.

APPEARANCES AT THE HEARING: GORDON WOOD FOR THE APPLICANT;
F.R. VON VEH, W.F. MCCARTNEY FOR THE RESPONDENT; ROBERT SOULIERE
FOR INTERVENER #1; B. CHERCOVER, C. BORSK FOR INTERVENER #2.

1. IN THIS APPLICATION FOR CERTIFICATION THE FIRST ISSUE TO BE DEALT WITH IS WHETHER OR NOT THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND BEEF TERMINAL EMPLOYEES ASSOCIATION, WHICH IS A BAR TO THE APPLICATION. IT APPEARS THAT THE BEEF TERMINAL EMPLOYEES ASSOCIATION WAS FORMED ON OR ABOUT DECEMBER 13TH 1967 AND SUBSEQUENTLY ENTERED INTO A COLLECTIVE AGREEMENT WITH THE

RESPONDENT, BEEF TERMINAL LIMITED, WHICH WAS TO REMAIN IN FULL FORCE AND EFFECT UNTIL DECEMBER 31ST 1969. THE BEEF TERMINAL EMPLOYEES ASSOCIATION HAS NOT BEEN CERTIFIED BY THIS BOARD.

2. ON OR ABOUT FEBRUARY 6TH 1969 INTERVENER #2 IN THE INSTANT CASE, AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, MADE AN APPLICATION FOR CERTIFICATION WITH RESPECT TO THE EMPLOYEES OF BEEF TERMINAL LIMITED. THE BEEF TERMINAL EMPLOYEES ASSOCIATION INTERVENED IN THAT APPLICATION AND ON THE CONSENT OF ALL PARTIES, NOTWITHSTANDING THE EXISTENCE OF THE PURPORTED COLLECTIVE AGREEMENT, THE BOARD ORDERED A REPRESENTATION VOTE. THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA WAS THE ONLY UNION ON THE BALLOT, BOARD FILE NO. 15646-68-R (DISMISSED APRIL 25TH 1969 SUBSEQUENT TO A VOTE).

3. IF THE PURPORTED COLLECTIVE AGREEMENT BETWEEN THE BEEF TERMINAL EMPLOYEES ASSOCIATION AND BEEF TERMINAL LIMITED IS STILL IN FULL FORCE AND EFFECT THEN IT CONSTITUTES A BAR TO THE PRESENT APPLICATION PURSUANT TO SECTION 5(1) OF THE LABOUR RELATIONS ACT. SECTION 5(1) PROVIDES:

"WHERE NO TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OF THE EMPLOYEES OF AN EMPLOYER IN A UNIT THAT A TRADE UNION CLAIMS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING AND THE EMPLOYEES IN THE UNIT ARE NOT BOUND BY A COLLECTIVE AGREEMENT, A TRADE UNION MAY, SUBJECT TO SECTION 46, APPLY AT ANY TIME TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT OF THE EMPLOYEES IN THE UNIT. R.S.O. 1960, c. 202, 2.5(1)."

(EMPHASIS ADDED)

4. INITIALLY WE NOTE THAT THERE WAS NO APPLICATION BY BEEF TERMINAL LIMITED AND BEEF TERMINAL EMPLOYEES ASSOCIATION TO TERMINATE THE PURPORTED COLLECTIVE AGREEMENT PURSUANT TO SECTION 39(3) OF THE LABOUR RELATIONS ACT WHICH PROVIDES A PROCEDURE FOR EARLY TERMINATION OF COLLECTIVE AGREEMENTS. WE ARE SATISFIED THAT IT IS IMPLICIT IN THE BOARD'S DECISION IN THE EARLIER APPLICATION BY AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA THAT THERE WAS NOT A COLLECTIVE AGREEMENT IN FORCE. FIRST, IF THAT COLLECTIVE AGREEMENT HAD BEEN IN FORCE, THEN THE EARLIER APPLICATION WOULD HAVE BEEN UNTIMELY BY REASON OF SECTION 5 AND THE BOARD WOULD NOT HAVE PROCEEDED AND ORDERED A VOTE. SECOND, IT IS THE BOARD'S PRACTICE WHERE AN APPLICATION IS MADE AND THERE IS AN INCUMBENT TRADE UNION, THAT THE BOARD WILL ORDER A VOTE WITH BOTH THE APPLICANT TRADE UNION AND THE INCUMBENT TRADE UNION APPEARING ON THE BALLOT; IN THE EARLIER APPLICATION THE BEEF TERMINAL EMPLOYEES ASSOCIATION DID NOT APPEAR ON THE BALLOT.

12. IT APPEARS FROM THE PREVIOUS APPLICATION THAT THE CONSTITUTION FOR THE BEEF TERMINAL EMPLOYEES ASSOCIATION WAS PASSED AT A MEETING OF MEMBERS ON DECEMBER 13TH 1967 AND THE PURPORTED COLLECTIVE AGREEMENT, WHICH HAS BEEN DISCUSSED EARLIER IN THESE REASONS, WAS SUBSEQUENTLY SIGNED.

13. IT IS REASONABLE TO INFER FROM THE BOARD'S EARLIER DECISION WITH RESPECT TO THE APPLICATION BY THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA THAT THE PURPORTED COLLECTIVE AGREEMENT WAS NOT A COLLECTIVE AGREEMENT BECAUSE THE BEEF TERMINAL EMPLOYEES ASSOCIATION WAS NOT A PROPER TRADE UNION. HOWEVER, WE ARE SATISFIED THAT NO SPECIFIC FINDING WAS MADE AS TO WHEN ANY IMPROPRIETY TOOK PLACE.

14. WHEN WE CONSIDER THAT THERE WAS A RECENT VOTE AMONG THE EMPLOYEES AND THAT THEY WERE GIVEN THE OPPORTUNITY TO VOTE FOR A TRADE UNION WHICH HAS STATUS BEFORE THIS BOARD, THAT THERE HAS BEEN NO SPECIFIC FINDING AS TO THE TIME OF ANY IMPROPRIETY WITH RESPECT TO BEEF TERMINAL EMPLOYEES ASSOCIATION AND THAT THE APPLICANT IN THIS CASE IS A NEW ORGANIZATION, WE ARE NOT PREPARED TO FIND THAT THIS NEW ORGANIZATION IS TAINTED BECAUSE SOME OF THE EMPLOYEES WHO ASSISTED IN THE FORMATION OF THE BEEF TERMINAL EMPLOYEES ASSOCIATION ALSO ASSISTED IN THE FORMATION OF THE PRESENT APPLICANT. WHILE THERE IS IMPROPER CONDUCT WHICH MAY BE RELEVANT AND WHICH MAY AFFECT SUBSEQUENT PROCEEDINGS, WE ARE NOT PREPARED TO CLOTHE PERSONS WHO HAVE COMMITTED INDUSTRIAL CRIMES OR IMPROPRIETIES WITH AN INDUSTRIAL RECORD, SIMILAR TO A CRIMINAL RECORD, FOR THE PURPOSE OF INFLUENCING EVERY SUBSEQUENT PROCEEDING BEFORE THIS BOARD.

15. WE ARE THEREFORE SATISFIED THAT THERE IS NO BASIS FOR FINDING THAT THE APPLICANT WAS NOT FREELY CHOSEN BY THE EMPLOYEES AND IN THE CIRCUMSTANCES OF THIS CASE WE ARE NOT PREPARED TO INVOKE THE PRINCIPLE SET FORTH IN THE SECOND CANADIAN FABRICATED PRODUCTS LIMITED CASE, SUPRA. WE THEREFORE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

16. WE FURTHER FIND THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF YORK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE

RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 17TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16295-69-R: CANADIAN BUSINESS MACHINE WORKERS UNION (APPLICANT) V.
THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (RESPONDENT)
CANADIAN OFFICE WORKERS UNION No. 159 (INTERVENER).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: W.C. IVES AND G. McCUTCHEON FOR THE APPLICANT, K. SCOTT, I. TARRANT AND M. WILSON FOR THE RESPONDENT, E. HUGHES AND J. LABONTE FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 16, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE OFFICE AND CLERICAL EMPLOYEES ARE SALARIED EMPLOYEES OF THE RESPONDENT. IN A PREVIOUS SIMILAR APPLICATION BY THE APPLICANT, BOARD FILE 16164-69-R, THE BOARD IN ITS DECISION DATED JUNE 6TH, 1969, DISMISSED THE APPLICATION FOR THE REASONS THEREIN CONTAINED ON THE GROUNDS THAT THE APPLICANT'S CONSTITUTION PROHIBITED THE APPLICANT FROM TAKING THE SALARIED EMPLOYEES INTO MEMBERSHIP.

2. FOLLOWING A NOTICE OF MOTION GIVEN TO THE MEMBERSHIP AT A MEETING ON APRIL 14TH, 1969, A MOTION WAS SUBSEQUENTLY MOVED, VOTED UPON, AND CARRIED AT A MEMBERSHIP MEETING ON JUNE 3RD, 1969, WHEREIN THE RELEVANT PROVISION OF THE CONSTITUTION WAS AMENDED TO PERMIT "SALARIED EMPLOYEES TO BE INCLUDED IN OUR UNION" IN ADDITION TO ALL PIECE-WORKING AND HOURLY RATED EMPLOYEES. THIS AMENDMENT TO THE CONSTITUTION WAS IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE XIV SECTION 2 OF THE APPLICANT'S CONSTITUTION SINCE MORE THAN ONE MONTHS' NOTICE OF THE AMENDMENT WAS GIVEN PRIOR TO ITS ADOPTION BY A VOTE OF THE MEMBERSHIP.

3. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT WHICH IS ABLE TO TAKE INTO MEMBERSHIP ALL THE EMPLOYEES OF THE RESPONDENT WHO MAY BE INCLUDED IN ANY BARGAINING UNIT WHICH THE BOARD MAY DEEM TO BE APPROPRIATE.

12. IT APPEARS FROM THE PREVIOUS APPLICATION THAT THE CONSTITUTION FOR THE BEEF TERMINAL EMPLOYEES ASSOCIATION WAS PASSED AT A MEETING OF MEMBERS ON DECEMBER 13TH 1967 AND THE PURPORTED COLLECTIVE AGREEMENT, WHICH HAS BEEN DISCUSSED EARLIER IN THESE REASONS, WAS SUBSEQUENTLY SIGNED.

13. IT IS REASONABLE TO INFER FROM THE BOARD'S EARLIER DECISION WITH RESPECT TO THE APPLICATION BY THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA THAT THE PURPORTED COLLECTIVE AGREEMENT WAS NOT A COLLECTIVE AGREEMENT BECAUSE THE BEEF TERMINAL EMPLOYEES ASSOCIATION WAS NOT A PROPER TRADE UNION. HOWEVER, WE ARE SATISFIED THAT NO SPECIFIC FINDING WAS MADE AS TO WHEN ANY IMPROPRIETY TOOK PLACE.

14. WHEN WE CONSIDER THAT THERE WAS A RECENT VOTE AMONG THE EMPLOYEES AND THAT THEY WERE GIVEN THE OPPORTUNITY TO VOTE FOR A TRADE UNION WHICH HAS STATUS BEFORE THIS BOARD, THAT THERE HAS BEEN NO SPECIFIC FINDING AS TO THE TIME OF ANY IMPROPRIETY WITH RESPECT TO BEEF TERMINAL EMPLOYEES ASSOCIATION AND THAT THE APPLICANT IN THIS CASE IS A NEW ORGANIZATION, WE ARE NOT PREPARED TO FIND THAT THIS NEW ORGANIZATION IS TAINTED BECAUSE SOME OF THE EMPLOYEES WHO ASSISTED IN THE FORMATION OF THE BEEF TERMINAL EMPLOYEES ASSOCIATION ALSO ASSISTED IN THE FORMATION OF THE PRESENT APPLICANT. WHILE THERE IS IMPROPER CONDUCT WHICH MAY BE RELEVANT AND WHICH MAY AFFECT SUBSEQUENT PROCEEDINGS, WE ARE NOT PREPARED TO CLOTHE PERSONS WHO HAVE COMMITTED INDUSTRIAL CRIMES OR IMPROPRIETIES WITH AN INDUSTRIAL RECORD, SIMILAR TO A CRIMINAL RECORD, FOR THE PURPOSE OF INFLUENCING EVERY SUBSEQUENT PROCEEDING BEFORE THIS BOARD.

15. WE ARE THEREFORE SATISFIED THAT THERE IS NO BASIS FOR FINDING THAT THE APPLICANT WAS NOT FREELY CHOSEN BY THE EMPLOYEES AND IN THE CIRCUMSTANCES OF THIS CASE WE ARE NOT PREPARED TO INVOKE THE PRINCIPLE SET FORTH IN THE SECOND CANADIAN FABRICATED PRODUCTS LIMITED CASE, SUPRA. WE THEREFORE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

16. WE FURTHER FIND THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF YORK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE

RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 17TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

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APPEARANCES AT THE HEARING: W.C. IVES AND G. MCCUTCHEON FOR THE APPLICANT, K. SCOTT, I. TARRANT AND M. WILSON FOR THE RESPONDENT, E. HUGHES AND J. LABONTE FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 16, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE OFFICE AND CLERICAL EMPLOYEES ARE SALARIED EMPLOYEES OF THE RESPONDENT. IN A PREVIOUS SIMILAR APPLICATION BY THE APPLICANT, BOARD FILE 16164-69-R, THE BOARD IN ITS DECISION DATED JUNE 6TH, 1969, DISMISSED THE APPLICATION FOR THE REASONS THEREIN CONTAINED ON THE GROUNDS THAT THE APPLICANT'S CONSTITUTION PROHIBITED THE APPLICANT FROM TAKING THE SALARIED EMPLOYEES INTO MEMBERSHIP.

2. FOLLOWING A NOTICE OF MOTION GIVEN TO THE MEMBERSHIP AT A MEETING ON APRIL 14TH, 1969, A MOTION WAS SUBSEQUENTLY MOVED, VOTED UPON, AND CARRIED AT A MEMBERSHIP MEETING ON JUNE 3RD, 1969, WHEREIN THE RELEVANT PROVISION OF THE CONSTITUTION WAS AMENDED TO PERMIT "SALARIED EMPLOYEES TO BE INCLUDED IN OUR UNION" IN ADDITION TO ALL PIECE-WORKING AND HOURLY RATED EMPLOYEES. THIS AMENDMENT TO THE CONSTITUTION WAS IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE XIV SECTION 2 OF THE APPLICANT'S CONSTITUTION SINCE MORE THAN ONE MONTHS' NOTICE OF THE AMENDMENT WAS GIVEN PRIOR TO ITS ADOPTION BY A VOTE OF THE MEMBERSHIP.

3. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT WHICH IS ABLE TO TAKE INTO MEMBERSHIP ALL THE EMPLOYEES OF THE RESPONDENT WHO MAY BE INCLUDED IN ANY BARGAINING UNIT WHICH THE BOARD MAY DEEM TO BE APPROPRIATE.

4. ANOTHER PROBLEM FACED BY THE BOARD IN THIS MATTER WAS THE FACT THAT THE MAJORITY OF THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT IN THIS CASE WERE THE MEMBERSHIP CARDS WHICH WERE TRANSFERRED AT THE APPLICANT'S REQUEST FROM BOARD FILE 16164-69-R. ALL OF SUCH MEMBERSHIP CARDS WERE SIGNED PRIOR TO THE AMENDMENT TO THE APPLICANT'S CONSTITUTION WHICH PERMITTED THE APPLICANT TO TAKE THESE PERSONS INTO MEMBERSHIP. THE QUESTION THEREFORE ARISES WHETHER APPLICATIONS FOR MEMBERSHIP SIGNED IN THESE CIRCUMSTANCES CAN BE RELIED ON AS A TRUE INDICATION OF THE EMPLOYEES' INTENT TO JOIN THE APPLICANT UNION FOR THE PURPOSE OF THIS APPLICATION.

5. THE FACTS OF THIS CASE ARE DISTINGUISHABLE FROM THE SITUATION WHERE A PERSON SIGNS AN APPLICATION FOR MEMBERSHIP IN AN ORGANIZATION WHICH IS NOT IN EXISTENCE AT THE TIME THE APPLICATION FOR MEMBERSHIP WAS SIGNED. IN THAT CASE THERE WOULD BE NOTHING IN EXISTENCE FOR THE PERSON TO JOIN AND THERE WOULD BE NO MEANS OF ASCERTAINING THE PERSON'S INTENTIONS IN SIGNING SUCH MEMBERSHIP CARD. SINCE THERE WOULD BE NO CONSTITUTION IN EXISTENCE FOR AN ORGANIZATION THAT HAD NOT AS YET BEEN FORMED THERE WOULD BE NO WAY OF ASCERTAINING WHAT THE EMPLOYEE INTENDED TO JOIN.

6. IN THE INSTANT CASE, HOWEVER, THE APPLICANT UNION HAD BEEN IN EXISTENCE SINCE 1944 AND AT THE TIME THE MEMBERSHIP CARDS WERE SIGNED THE APPLICANT HAD A CONSTITUTION WHICH EXPRESSED THE OBJECTIVES, ETC. OF THE ORGANIZATION. IT IS READILY APPARENT THAT THE EMPLOYEES WHO APPLIED FOR MEMBERSHIP IN THE APPLICANT THEREBY INDICATED THEIR INTENTION AND DESIRE TO BECOME MEMBERS OF THE APPLICANT UNION AS IT THEN EXISTED. THE FACT THAT THE APPLICANT UNION WAS (AS THE BOARD FOUND ON JUNE 6, 1969) UNABLE TO TAKE SUCH EMPLOYEES INTO MEMBERSHIP IN NO WAY ALTERED THE INTENTION OF THE EMPLOYEES AS EXPRESSED ON THE APPLICATIONS FOR MEMBERSHIP. SINCE THE APPLICANT UNION HAS AMENDED ITS CONSTITUTION AND THE PRECLUSIVE PROVISION UNDER THE MEMBERSHIP QUALIFICATIONS HAS BEEN REMOVED, THE APPLICATIONS FOR MEMBERSHIP MAY NOW BE ACCEPTED BY THE APPLICANT UNION. THE FACT THAT THIS APPLICATION HAS BEEN MADE ON THE BASIS OF THE MEMBERSHIP EVIDENCE FILED IS AMPLE PROOF THAT THE APPLICANT HAS NOW ACCEPTED THE MEMBERSHIP APPLICATIONS FROM THE SALARIED EMPLOYEES. IN ADDITION, SINCE THERE WERE NO OBJECTIONS TO THIS APPLICATION FILED BY ANY OF THE EMPLOYEES OF THE RESPONDENT THERE IS NOTHING BEFORE THE BOARD WHICH WOULD DESTROY THE QUALITY OF THE MEMBERSHIP EVIDENCE AND WE ARE THEREFORE PREPARED TO ACCEPT THE EVIDENCE AT ITS FACE VALUE. THE BOARD THEREFORE FINDS THAT THE DOCUMENTARY EVIDENCE FILED BY THE APPLICANT IN THIS MATTER IS A TRUE INDICATION OF THE EMPLOYEES' INTENTION OF JOINING THE APPLICANT UNION AS PRESENTLY CONSTITUTED.

IF ANY DOUBT EXISTS WITH RESPECT TO THE EMPLOYEES' INTENTIONS AS EXPRESSED IN THEIR APPLICATION FOR MEMBERSHIP CARDS, THIS DOUBT WILL BE RESOLVED BY THE REPRESENTATION VOTE WHICH MUST BE TAKEN IN THIS MATTER.

7. WHILE THIS APPLICATION HAS BEEN SUCCESSFUL WITH RESPECT TO THE ABOVE MATTERS, IT IS NOT NECESSARILY TO THE CREDIT OF THOSE OFFICIALS OR AGENTS OF THE APPLICANT RESPONSIBLE SINCE THE PROCEDURES ADOPTED AND THE RECORDING OF THE EVENTS BY THE APPLICANT WHICH PRECEDED THE HEARING IN THIS MATTER LEFT A GREAT DEAL TO BE DESIRED AND EXHIBITED AN UNCOMMON DEGREE OF CARELESSNESS.

8. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 23RD, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT 222 LANSDOWNE AVENUE, TORONTO AND 15 MARMAC DRIVE, REXDALE, SAVE AND EXCEPT SUCH EMPLOYEES AS ARE HEREIN-AFTER EXPRESSLY EXCLUDED, NAMELY: SALES AND SERVICE EMPLOYEES, FOREMEN, SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISORS, CAFETERIA STAFF, PART-TIME EMPLOYEES, SECRETARY TO THE PRESIDENT, VICE PRESIDENT, MANUFACTURING, VICE PRESIDENT, FINANCE, STAFF ASSISTANT, INDUSTRIAL RELATIONS OFFICER, AND UP TO A MAXIMUM OF SIX EMPLOYEES IN THE PREPARATION OF FINANCIAL STATEMENTS, BUDGETS, MANAGEMENT PAYROLL AND GROUP BENEFITS, WITH THE UNDERSTANDING THAT ANY ADDITIONS ABOVE THIS NUMBER IN THESE CATEGORIES WILL BE AGREED WITH THE UNION BEFORE BEING MADE; AND EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE CANADIAN BUSINESS MACHINE WORKERS' UNION.

10. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

16301-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. IRVINE AND FRANCIS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

16302-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. IRVINE AND FRANCIS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: THOMAS L. REES, KENNETH POWELL, MRS. RITA SHIELDS AND JEAN-GUY SEQUIN FOR THE APPLICANT, C.G. RIGGS, COLIN MORLEY AND L. DAVID FOR THE RESPONDENT, JOHN KIRKLAND AND M. BURCHILL FOR THE OBJECTORS.

DECISION OF THE BOARD: August 20, 1969.

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2. THE ABOVE MATTERS ARE CONSOLIDATED.

3. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF FULL-TIME AND A UNIT OF PART-TIME EMPLOYEES OF THE RESPONDENT AT SMITHS FALLS.

4. THERE WAS FILED IN THESE MATTERS DOCUMENTS SIGNED BY CERTAIN EMPLOYEES OF THE RESPONDENT IN OPPOSITION TO THIS APPLICATION.

5. THE APPLICANT'S MEMBERSHIP POSITION WAS SUCH THAT IT WAS ENTITLED TO OUTRIGHT CERTIFICATION IN THE FULL-TIME BARGAINING UNIT SUBJECT TO WHETHER THE EVIDENCE RELATING TO THE PETITIONS CAST DOUBT ON ITS MEMBERSHIP EVIDENCE.

6. IN THE PART-TIME BARGAINING UNIT, THE APPLICANT ENJOYED THE SUPPORT OF ONLY SEVEN OUT OF THE THIRTEEN EMPLOYEES IN THE BARGAINING UNIT. THE PETITIONS WERE THEREFORE NOT RELEVANT SINCE THE APPLICANT'S MEMBERSHIP POSITION ONLY ENTITLED IT TO A REPRESENTATION VOTE.

7. THE APPLICANT CALLED EVIDENCE IN SUPPORT OF ITS CHARGES OF IMPROPER CONDUCT CONCERNING THE SIGNING OF THE PETITIONS. IT WAS ESTABLISHED THAT TWO ATTEMPTS HAD BEEN MADE TO OBTAIN SIGNATURES OF EMPLOYEES WHO OPPOSED THE UNION. IN THE FIRST ATTEMPT, MR. HODGE, ONE OF THE RESPONDENT'S STORE MANAGERS, SUMMONED EMPLOYEES TO HIS OFFICE AND REQUESTED THAT THEY SIGN THE PETITION. NO THREATS, COERCION, INTIMIDATION OR PROMISES WERE USED BY MR. HODGE. SOME OF THE EMPLOYEES SIGNED THE PETITION AT HIS REQUEST AND OTHERS REFUSED TO SIGN. NOTHING HAPPENED TO THOSE EMPLOYEES WHO REFUSED TO SIGN.

8. BECAUSE OF THE NUMBER OF PEOPLE INVOLVED IN CIRCULATING THE FIRST PETITION (AND WE ALSO SUSPECT BECAUSE OF THE INVOLVEMENT OF MR. HODGE) IT WAS DECIDED TO CIRCULATE A SECOND PETITION ON JUNE 24TH, 1969, WHICH WAS WITNESSED BY ONE PERSON.

9. THE EVIDENCE ESTABLISHED THAT ONE OF THE PERSONS WHO SIGNED THIS SECOND DOCUMENT WAS CLAIMED BY THE APPLICANT AS A MEMBER. THIS PERSON WAS EMPLOYED AT THE STORE WHERE MR. HODGE HAD INVITED THE EMPLOYEES TO SIGN AND HAD, IN FACT, SIGNED THE FIRST PETITION.

10. THE EVIDENCE FURTHER ESTABLISHED THAT BECAUSE OF THE OPEN MANNER IN WHICH THE PETITIONS WERE CIRCULATED DURING WORKING HOURS IN THE RESPONDENT'S STORES, THE EMPLOYEES WOULD TEND TO BELIEVE THAT MANAGEMENT CONDONED OR APPROVED THE OPPOSITION TO THE UNION.

11. ON ALL THE EVIDENCE IN THIS CASE, WE HAVE NO HESITATION IN FINDING THAT THE SECOND PETITION FLOWED DIRECTLY AND IMMEDIATELY FROM THE FIRST. BECAUSE OF THE ACTIVE PARTICIPATION OF A MEMBER OF MANAGEMENT IN THE CIRCULATION OF THE FIRST PETITION, WE WOULD NOT BE PREPARED TO FIND THAT THE FIRST PETITION CASTS DOUBT ON THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT SO AS TO NECESSITATE THE TAKING OF A REPRESENTATION VOTE. SINCE THE SECOND PETITION FLOWED DIRECTLY AND IMMEDIATELY FROM THE FIRST PETITION, THE EVIDENCE WHICH TAINTED THE FIRST PETITION IS THEREFORE APPLICABLE TO THE SECOND DOCUMENT. WE ARE THEREFORE NOT PREPARED TO FIND THAT THE SECOND PETITION REPRESENTS A FREE EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THAT DOCUMENT.

12. THE APPLICANT ARGUED THAT THE PARTICIPATION OF MANAGEMENT AS DESCRIBED ABOVE WOULD ALSO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING DISCLOSED BY A REPRESENTATION VOTE IN THE PART-TIME BARGAINING UNIT. THE APPLICANT THEREFORE ASKED THE BOARD TO EXERCISE ITS DISCRETION UNDER SECTION 7(5) OF THE LABOUR RELATIONS ACT AND CERTIFY THE APPLICANT WITHOUT THE TAKING OF A REPRESENTATION VOTE.

13. ON ALL THE EVIDENCE IN THIS CASE, WE HAVE FOUND THAT MANAGEMENT'S PARTICIPATION DESTROYED THE EVIDENTIARY VALUE OF THE PETITIONS AS REPRESENTING A FREE EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES. MANAGEMENT'S PARTICIPATION IN THE CIRCULATION OF THE PETITIONS MAY BE DESCRIBED AS AN UNLAWFUL INTERFERENCE WITH THE EMPLOYEES' SELECTION OF A TRADE UNION CONTRARY TO SECTION 48 OF THE ACT. HOWEVER, WHILE THE ACTIONS OF MANAGEMENT DESCRIBED ABOVE MAY BE CHARACTERIZED AS UNDUE INFLUENCE, NO ACTIVE COERCION, INTIMIDATION, THREATS OR PROMISES WERE USED BY MANAGEMENT.

14. ALTHOUGH THE EMPLOYER'S ACTIVITIES WOULD INDICATE TO HIS EMPLOYEES THAT THE EMPLOYER DID NOT WISH TO BARGAIN WITH THEM THROUGH A CERTIFIED BARGAINING AGENT, IT MUST BE RECOGNIZED THAT EMPLOYERS GENERALLY DO NOT BELIEVE THAT IT IS TO THE EMPLOYER'S ADVANTAGE AND IT IS A VERY RARE EMPLOYER INDEED WHO WOULD WELCOME THIS SITUATION. THE OBJECTIONABLE ACTIVITY WOULD TEND TO HAVE A DIRECT EFFECT ON AN INDIVIDUAL EMPLOYEE SINCE HIS OPPOSITION TO OR SUPPORT FOR THE UNION WOULD BE MADE KNOWN TO THE EMPLOYER WHEN HE SIGNED OR REFUSED TO SIGN THE PETITION. HOWEVER, SUCH EFFECT COULD NOT REASONABLY BE SAID TO CARRY OVER TO A SECRET BALLOT CAST IN A REPRESENTATION VOTE SINCE THE EMPLOYER WOULD NOT KNOW HOW HE VOTED. THE MERE FACT THAT AN EMPLOYER INDICATED THAT HE WAS NOT ANXIOUS TO HAVE A UNION REPRESENT HIS EMPLOYEES WOULD NOT DESTROY THE RESULTS OF A REPRESENTATION VOTE. AN EMPLOYER IS PERMITTED TO EXPRESS SUCH VIEWS BY SECTION 48 OF THE LABOUR RELATIONS ACT. WE ARE HEREOFRE NOT PREPARED TO FIND THAT THE EMPLOYER'S ACTIVITY AS DESCRIBED ABOVE, IN THE ABSENCE OF COERCION, INTIMIDATION, THREATS OR PROMISES, WOULD TEND TO PREVENT THE TRUE WISHES OF THE EMPLOYEES BEING DISCLOSED IN A REPRESENTATION VOTE.

15. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

16. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS I.G.A. FOODLINER STORES AT SMITHS FALLS, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 24TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #1.

19. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS I.G.A. FOODLINER STORES AT SMITHS FALLS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, AND PERSONS COVERED BY BARGAINING UNIT #1, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

20. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 24TH, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

21. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2. ALL EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

22. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

23. THE MATTER IS REFERRED TO THE REGISTRAR.

16308-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LAKEFIELD COLLEGE SCHOOL (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: W.A. ACTON FOR THE APPLICANT;
W.I.C. BINNIE AND A.A. BRANSCOMBE FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 1, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH TWO MATTERS SOMEWHAT OUT OF THE ORDINARY ARE RAISED BY THE RESPONDENT.

2. THE FIRST MATTER IS A SUBMISSION MADE BY THE RESPONDENT TO THE EFFECT THAT THIS APPLICATION OUGHT TO BE BARRED BY THE BOARD AS UNTIMELY UNDER SECTION 77(2)(1) OF THE LABOUR RELATIONS ACT IN THE LIGHT OF THE CIRCUMSTANCES PREVAILING HEREIN.

3. THE CIRCUMSTANCES REFERRED TO ARE THAT THE APPLICANT HAD PREVIOUSLY APPLIED FOR CERTIFICATION OF A SIMILAR UNIT TO THAT IN THE PRESENT CASE. THE APPLICATION CAME ON FOR HEARING BEFORE THE BOARD ON JUNE 2ND, 1969. THE APPLICANT ALTHOUGH DULY NOTIFIED OF THE DATE AND PLACE OF THE HEARING DID NOT APPEAR AT THE HEARING AND OFFERED NO EXPLANATION FOR ITS ABSENCE. THE HEARING WAS ATTENDED BY REPRESENTATIVES OF THE RESPONDENT AND THEIR SOLICITOR. BY DECISION DATED JUNE 5TH, 1969, THE BOARD DISMISSED THE APPLICATION.

4. IN THE CAMPBELL SOUP COMPANY LTD. CASE, ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT, FEBRUARY 1968, P. 1091 THE BOARD, IN DEALING WITH AN APPLICATION BROUGHT FOUR DAYS AFTER WITHDRAWAL BY THE APPLICANT IN THE FACE OF CHARGES OF IMPROPER CONDUCT BROUGHT BY THE RESPONDENT OF A PRIOR APPLICATION HAD THIS TO SAY:

"THE RESPONDENT POINTED OUT THAT THE APPLICANT HAD PREVIOUSLY APPLIED FOR A SIMILAR UNIT OF EMPLOYEES OF THE RESPONDENT AND, FOLLOWING ALLEGATIONS OF IMPROPER CONDUCT MADE BY THE RESPONDENT, THE APPLICANT REQUESTED LEAVE TO WITHDRAW ITS APPLICATION AND THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSED THE APPLICATION ON NOVEMBER 16TH 1967.

THE RESPONDENT ARGUED THAT IN VIEW OF THE FACT THAT THERE WERE ONLY FOUR DAYS BETWEEN THE DISMISSAL OF THE EARLIER APPLICATION AND THE MAKING OF THE INSTANT APPLICATION, THE APPLICANT SHOULD BE BARRED IN THIS MATTER AND THE BOARD SHOULD NOT ENTERTAIN AN APPLICATION FROM THE APPLICANT MADE SO SOON AFTER THE DISMISSAL OF THE EARLIER APPLICATION. EXCEPT IN VERY EXTENUATING CIRCUMSTANCES, THE BOARD'S PRACTICE WITH RESPECT TO THE IMPOSITION OF A BAR AGAINST AN UNSUCCESSFUL APPLICANT IS EXERCISED ONLY WHERE A REPRESENTATION VOTE IS HELD AND THE APPLICANT FAILS TO OBTAIN THE NECESSARY MAJORITY TO BE ENTITLED TO CERTIFICATION.

IN SUCH A CASE, THE SUPPORT ENJOYED BY THE APPLICANT AMONG THE EMPLOYEES OF THE COMPANY WOULD BE FULLY TESTED BY A REPRESENTATION VOTE AND THE BOARD WILL NOT ENTERTAIN A NEW APPLICATION BY THE SAME APPLICANT UNTIL SUCH TIME AS THE EMPLOYEES HAVE HAD A CHANCE TO PROPERLY RECONSIDER THEIR POSITION. THE BOARD DOES NOT CONSIDER REPETITIOUS APPLICATIONS WHERE THE MEMBERSHIP EVIDENCE HAS BEEN FULLY TESTED BY A VOTE TO BE IN THE INTEREST OF SOUND LABOUR RELATIONS. HOWEVER, IN THIS CASE, THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THE EARLIER CASE WAS NOT TESTED BY A REPRESENTATION VOTE AND IT IS NOT THE BOARD'S PRACTICE TO IMPOSE A BAR FOLLOWING THE DISMISSAL OF THE APPLICATION."

5. THERE IS NO CHARGE OF IMPROPER CONDUCT IN THE PRESENT INSTANCE. THE RESPONDENT DID SUGGEST THAT THE APPLICANT'S FAILURE TO APPEAR AT THE FIRST HEARING AND ITS SUBSEQUENT APPLICATION HAD SOME REFERENCE TO THE FACT THAT CERTAIN EMPLOYEES WERE LAID OFF BETWEEN THOSE DATES OF THE TWO APPLICATIONS. THE RESPONDENT INTIMATED THAT THIS MIGHT BE TO THE APPLICANT'S ADVANTAGE, OR, IN THE EVENT OF A VOTE, WOULD DISENFRANCHISE THE LAID OFF EMPLOYEES. THE MEMBERSHIP EVIDENCE, HOWEVER, IS SUCH AS TO DENY SUCH MOTIVATION. HAVING IN MIND THE INCONVENIENCE AND EXPENSE TO WHICH THE RESPONDENT WAS PUT BY THE WHOLLY UNEXPLAINED CONDUCT OF THE APPLICANT, IT IS WITH SOME RELUCTANCE THAT THE BOARD, IN LIGHT OF THE CASE CITED ABOVE, DENYS THE REQUEST FOR A BAR.

6. THE SECOND MATTER RAISED BY THE RESPONDENT WAS THAT THE WORD "SERVICES" INCLUDED IN THE NORMAL DESCRIPTION OF SCHOOL BARGAINING UNITS SHOULD NOT INCLUDE WHAT IT REFERRED AS THE "DOMESTIC STAFF" IN A BOARDING SCHOOL SUCH AS THE RESPONDENT HEREIN. THE DOMESTIC STAFF COMPRISED SEVEN FULL TIME AND ONE PART TIME EMPLOYEE AT THE DATE OF THE APPLICATION. THE RESPONDENT TOOK THE POSITION THAT THEY SHOULD NOT BE INCLUDED IN A UNIT WITH THE OTHER EMPLOYEES BECAUSE OF LACK OF COMMUNITY OF INTEREST.

7. HAVING REGARD TO THE FOREGOING, MR. D.K. AYSLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT WITH PARTICULAR REFERENCE TO THOSE EMPLOYEES DESCRIBED BY THE RESPONDENT AS "DOMESTIC STAFF" AND THE LISTS SUPPLIED BY THE RESPONDENT.

16325-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)
v. THE COCHRANE-IROQUOIS FALLS BOARD OF EDUCATION (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: August 12, 1969.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ENGAGED IN CLEANING AND CARETAKING.

3. THE APPLICANT ON BEHALF OF LOCAL UNION No. 13911 ENTERED INTO A COLLECTIVE AGREEMENT WITH THE IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD DATED NOVEMBER 22ND, 1967 EFFECTIVE FROM JANUARY 1ST, 1968 TO NOVEMBER 30TH, 1970 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

4. PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO, C. 122, ON JANUARY 1ST, 1969, THE RESPONDENT BECAME A DIVISIONAL BOARD HAVING JURISDICTION OVER THE IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD, THE COCHRANE HIGH SCHOOL BOARD AND THE PUBLIC SCHOOL BOARDS IN A SPECIFIED AREA. AS OF JANUARY 1ST, 1969, THE SAID PUBLIC AND HIGH SCHOOL BOARDS WERE DISSOLVED.

5. AT THE TIME THE IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD WAS DISSOLVED, THE APPLICANT ON BEHALF OF LOCAL 13911 STILL HELD THE BARGAINING RIGHTS FOR THE CLEANING AND CARETAKING STAFF OF THE AFORESAID FORMER HIGH SCHOOL BOARD. IN THE INSTANT APPLICATION THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR CLEANING AND CARETAKING STAFF EMPLOYED IN OTHER SCHOOLS WHICH NOW FORM A PART OF THE RESPONDENT SCHOOL BOARD.

6. SECTION 84(2)(c) OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA) READS:

84(2) UPON THE ORGANIZATION OF A DIVISIONAL BOARD OF A SCHOOL DIVISION OF A DEFINED CITY AND IN RESPECT OF DIVISIONAL BOARDS OF ALL OTHER SCHOOL DIVISIONS ON THE 1ST DAY OF JANUARY, 1969,

(c) ALL DEBTS, CONTRACTS, AGREEMENTS AND LIABILITIES FOR WHICH SUCH BOARDS WERE LIABLE, EXCEPT EMPLOYMENT CONTRACTS WITH TEACHERS, BECOME OBLIGATIONS OF THE DIVISIONAL BOARD OR BOARDS AS PROVIDED BY THE ARBITRATORS UNDER SUBSECTIONS 3 AND 4.

7. THE DUTY OF THE RESPONDENT TO BARGAIN WITH THE APPLICANT WITH RESPECT TO THE EMPLOYEES OF THE DISSOLVED IROQUOIS FALLS AND CALVERT DISTRICT HIGH SCHOOL BOARD COVERED BY THE ABOVE REFERRED TO COLLECTIVE AGREEMENT IS A CONTINUING OBLIGATION BY REASON OF BOTH THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT AND SECTION 47A OF THE LABOUR RELATIONS ACT. SECTION 47A(10) READS:

WHERE ONE OR MORE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT IS ERECTED INTO ANOTHER MUNICIPALITY, OR TWO OR MORE SUCH MUNICIPALITIES ARE AMALGAMATED, UNITED OR OTHERWISE JOINED TOGETHER, OR ALL OR PART OF ONE SUCH MUNICIPALITY IS ANNEXED, ATTACHED OR ADDED TO ANOTHER SUCH MUNICIPALITY, THE EMPLOYEES OF THE MUNICIPALITIES CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED, AND,

- (A) THE BOARD MAY EXERCISE THE LIKE POWERS AS IT MAY EXERCISE UNDER SUBSECTION 5 AND 7 WITH RESPECT TO THE SALE OF A BUSINESS UNDER THIS SECTION;
- (B) THE NEW OR ENLARGED MUNICIPALITY HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTION AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES; AND
- (C) ANY TRADE UNION CONCERNED HAS THE LIKE RIGHTS AND OBLIGATIONS AS IT WOULD HAVE IN THE CASE OF THE INTERMINGLING OF EMPLOYEES IN TWO OR MORE BUSINESSES UNDER THIS SECTION.

8. THE BOARD FINDS THAT SECTION 47A(10) APPLIES TO THE INSTANT CASE AND THEREFORE THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED "ARE DEEMED TO HAVE BEEN INTERMINGLED" (SEE THE WATERLOO BOARD OF EDUCATION CASE, OLRB M.R. FEBRUARY 1969 1209). IT FOLLOWS THAT THE BOARD IS ENTITLED TO EXERCISE THE POWERS BESTOWED UPON IT BY THE ABOVE SUBSECTION NOTWITHSTANDING THAT THE APPLICATION IS ONE FOR CERTIFICATION AND NOT ONE BROUGHT DIRECTLY UNDER SECTION 47A OF THE ACT. THE EXISTENCE OF THE STATE OF FACTS SET OUT IN SECTION 47A (10) IS SUFFICIENT IN ANY PROCEEDING TO ENABLE THE BOARD TO EXERCISE THE POWERS OUTLINED THEREIN (SEE THE NORTH BAY BOARD OF EDUCATION CASE, BOARD FILE NO. 16068-69-R).

9. UNDER THE PROVISIONS OF SUBSECTION (5) OF SECTION 47A, THE BOARD MAY:

- (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;
- (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.

10. SINCE IN THE INSTANT CASE, IN ACCORDANCE WITH SECTION 47A(10), THE EMPLOYEES OF THE RESPONDENT ARE DEEMED TO BE INTER-MINGLED, THE BOARD PURSUANT TO SECTION 47A(5) FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THERE WAS FILED WITH THE BOARD A DOCUMENT DATED JUNE 1ST, 1969, BETWEEN THE RESPONDENT AND "ALL THE CARETAKERS IN THE EMPLOY OF THE COCHRANE-IROQUOIS FALLS BOARD OF EDUCATION WITH THE EXCEPTION OF THE IROQUOIS FALLS SECONDARY SCHOOL CARETAKERS UNDER LOCAL UNION #13911". THERE IS NO EVIDENCE BEFORE THE BOARD THAT THERE IS EVEN AN ENTITY, FAR LESS A TRADE UNION, THAT REPRESENTS THE CARETAKERS OF THE RESPONDENT. ACCORDINGLY, THE DOCUMENT IS NOT A COLLECTIVE AGREEMENT AS DEFINED IN SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT. THE DOCUMENT THEREFORE IS IN NO WAY A BAR TO THIS APPLICATION.

12. PURSUANT TO SUBSECTION (7) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 10. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

16412-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WATERLOO METAL STAMPINGS LTD. (RESPONDENT) V. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: D.M. STOREY AND E. CERSON FOR THE APPLICANT, C. MORLEY, H. BORDMAN AND A. JONES FOR THE RESPONDENT, R. KOSKIE AND T. CORRIGAN FOR THE INTERVENER.

DECISION OF THE BOARD: AUGUST 8, 1969.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER. THE RESPONDENT AND THE INTERVENER SUBMIT THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE UNIT OF EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION IS ALREADY COVERED BY A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THEM.

3. THERE WAS FILED WITH THE BOARD A COLLECTIVE AGREEMENT DATED MARCH 29TH, 1968 BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM APRIL 1ST, 1968 UNTIL MARCH 31ST, 1971. ARTICLE 11, THE RECOGNITION CLAUSE OF THE AGREEMENT, READS:

THE COMPANY RECOGNIZES THE UNION AS THE BARGAINING AGENT OF ALL ITS EMPLOYEES AT WATERLOO ONTARIO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE STAFF, SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK.

4. COUNSEL FOR THE RESPONDENT AND THE INTERVENER SUBMIT THAT THE ABOVE COLLECTIVE AGREEMENT WAS INTENDED TO COVER THE EMPLOYEES OF THE RESPONDENT AT KITCHENER AS WELL AS WATERLOO AND THAT THE EMPLOYEES OF THE RESPONDENT AT KITCHENER, IN FACT, ARE SUBJECT TO ALL THE BENEFITS AND LIABILITIES OF THE AGREEMENT. IT WAS CONTENDED THAT THE FAILURE TO AMEND THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT WAS A MUTUAL MISTAKE ON THE PART OF THE PARTIES. COUNSEL ACCORDINGLY SOUGHT LEAVE OF THE BOARD TO ADDUCE EVIDENCE IN SUPPORT OF THEIR SUBMISSIONS AND REQUESTED THAT THE BOARD RECTIFY THE SCOPE CLAUSE OF THE AGREEMENT SO AS TO CONFORM WITH THE REALITY OF THE SITUATION. THE REPRESENTATIVE OF THE APPLICANT ARGUED THAT THE RECOGNITION CLAUSE OF THE AGREEMENT IS CLEAR ON ITS FACE, THAT IS, IT ONLY COVERS THE EMPLOYEES OF THE RESPONDENT AT WATERLOO. THE APPLICANT RELIED UPON THE BOARD'S DECISION IN THE CANADA MACHINERY CORPORATION LIMITED CASE, CCH 61 CLLC 918.

5. DEALING FIRST WITH THE ABOVE CITED DECISION OF THE BOARD, IN THAT CASE THE ISSUE BEFORE THE BOARD WAS WHETHER A COLLECTIVE AGREEMENT BETWEEN A UNION AND AN EMPLOYER WAS BINDING UPON ANOTHER EMPLOYER. HERE THE ISSUE IS WHETHER A COLLECTIVE AGREEMENT ENTERED INTO BY THE INTERVENER AND THE RESPONDENT COVERS THE EMPLOYEES OF THE RESPONDENT AT KITCHENER AS WELL AS WATERLOO. THE DECISION IN THE CANADA MACHINERY CORPORATION LIMITED CASE (SUPRA) ACCORDINGLY HAS NO APPLICATION TO THE CIRCUMSTANCES OF THE INSTANT CASE.

6. DEALING NOW WITH THE SUBMISSIONS OF COUNSEL FOR THE RESPONDENT AND INTERVENER, IN ROBINSON V. GALT CHEMICAL PRODUCTS LTD. [1933] O.W.N. 502, RIDDELL, J.A., WITH REGARD TO THE RECTIFICATION OF CONTRACTS, MADE THE FOLLOWING STATEMENT AT 503:

IT IS UNNECESSARY TO CITE AUTHORITY FOR THE PROPOSITION THAT WHEN THE PARTIES TO A PROPOSED CONTRACT HAVE AGREED THAT THE AGREEMENT SHALL BE REDUCED TO WRITING, IT IS THE WRITING THAT IS LOOKED AT TO DETERMINE THE REAL CONTRACT. OF COURSE IF BY A MUTUAL MISTAKE, THE TRUE AGREEMENT IS NOT EXPRESSED, THE CONTRACT AS EXPRESSED IN WRITING WILL BE AMENDED ACCORDINGLY.

7. CHESHIRE AND FIFOOT, LAW OF CONTRACT (4TH ED.), WITH RESPECT TO THE RECTIFICATION OF CONTRACTS, READS AT P. 184:

IT HAS ALWAYS BEEN RECOGNIZED THAT TO PERMIT RECTIFICATION UPON ORAL TESTIMONY IS AN EXCEPTION, BUT A JUSTIFIABLE EXCEPTION, TO THE CARDINAL PRINCIPLE THAT PAROL EVIDENCE CANNOT BE RECEIVED TO CONTRADICT OR TO VARY A WRITTEN AGREEMENT.

8. IN AN ARBITRATION CASE RE OTTAWA NEWSPAPER GUILD, LOCAL 205, AND THE OTTAWA CITIZEN (1965) L.A.C. VOL. 16 338, D.C. THOMAS, C.C.J., FOR THE MAJORITY, FOUND THAT THAT BOARD HAD THE POWER TO GRANT RECTIFICATION OF A COLLECTIVE AGREEMENT WHERE IT WAS SIMPLY RECTIFYING AN OBVIOUS OMISSION SO THAT THE AGREEMENT READS AS IT WAS NEGOTIATED AND AGREED UPON BY THE PARTIES.

9. THE BOARD AT THE HEARING ALLOWED THE RESPONDENT AND THE INTERVENER TO ADDUCE EVIDENCE AS TO THE INTENTION OF THE PARTIES TO THE COLLECTIVE AGREEMENT DATED MARCH 29TH, 1968, AND THE APPLICATION OF THE AGREEMENT TO THE EMPLOYEES OF THE RESPONDENT AT KITCHENER, BUT RESERVED ITS DECISION AS TO THE ADMISSIBILITY OF THAT EVIDENCE. BASED ON THE ABOVE AUTHORITIES, IT IS OUR RULING THAT IN THE CIRCUMSTANCES OF THIS CASE, THE EVIDENCE IS ADMISSIBLE.

10. THE EVIDENCE IS THAT THE INTERVENER WAS CERTIFIED BY THIS BOARD ON SEPTEMBER 30TH, 1964 FOR ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, AND OFFICE STAFF. THE PARTIES SUBSEQUENTLY ENTERED INTO A COLLECTIVE AGREEMENT DATED JANUARY 11TH, 1965, EFFECTIVE FROM THAT DATE UNTIL JANUARY 10TH, 1968. THE SCOPE CLAUSE OF THAT AGREEMENT ONLY MADE REFERENCE TO EMPLOYEES OF THE RESPONDENT AT WATERLOO. AT THE TIME THE CERTIFICATE WAS ISSUED AND THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE PARTIES, THE ENTIRE OPERATIONS OF THE RESPONDENT WERE LOCATED AT WATERLOO.

11. IN 1966 THE RESPONDENT OPENED A PLANT AT KITCHENER FOR SECONDARY ASSEMBLY OPERATIONS. THE HEAD OFFICE OF THE COMPANY AND ITS MANUFACTURING OPERATION REMAINED AT WATERLOO. THE EMPLOYEES OF THE RESPONDENT WHO HAD BEEN DOING ASSEMBLY WORK IN THE WATERLOO PLANT WERE TRANSFERRED TO THE KITCHENER PLANT. AT THE TIME THE TRANSFER OF THESE EMPLOYEES WAS MADE TO KITCHENER, IT WAS A COMMON UNDERSTANDING BETWEEN THE RESPONDENT AND THE INTERVENER THAT THE COLLECTIVE AGREEMENT DATED JANUARY 11TH, 1965 WOULD COVER ALL EMPLOYEES LOCATED AT KITCHENER AND, IN FACT, ALL OF THE PROVISIONS OF THAT AGREEMENT WERE MADE APPLICABLE TO THE EMPLOYEES OF THE RESPONDENT AT THE KITCHENER PLANT.

12. WHEN THE PARTIES ENTERED INTO NEGOTIATIONS FOR THE CURRENT COLLECTIVE AGREEMENT TWO OF THE THREE EMPLOYEES ON THE INTERVENER'S BARGAINING COMMITTEE WERE EMPLOYED AT THE KITCHENER PLANT AND THE EMPLOYEES AT BOTH KITCHENER AND WATERLOO RATIFIED THE AGREEMENT THAT WAS ULTIMATELY ENTERED INTO BY THE RESPONDENT AND THE INTERVENER. AS UNDER THE PREVIOUS AGREEMENT, ALL OF THE TERMS AND CONDITIONS OF THE NEW AGREEMENT ARE BEING APPLIED EQUALLY TO THE EMPLOYEES AT BOTH KITCHENER AND WATERLOO. MORE SPECIFICALLY, UNION DUES ARE BEING CHECKED-OFF FOR THE EMPLOYEES AT BOTH LOCATIONS. THE WAGES, HOURS OF WORK, HOLIDAYS AND OTHER WORKING CONDITIONS PROVIDED FOR IN THE AGREEMENT ARE BEING COMPLIED WITH IN RELATION TO THE EMPLOYEES AT BOTH KITCHENER AND WATERLOO. THERE IS A COMMON SENIORITY LIST FOR ALL THE RESPONDENT'S EMPLOYEES AND GRIEVANCES HAVE BEEN PROCESSED UNDER THE AGREEMENT BY EMPLOYEES AT BOTH LOCATIONS. INDEED, SOME PROVISIONS OF THE AGREEMENT RELATE ONLY TO THE EMPLOYEES AT KITCHENER. SPECIFICALLY, ARTICLE 4.04 MAKES SPECIAL PROVISION FOR THE PAYMENT OF UNION DUES BY PART-TIME EMPLOYEES AND THERE ARE ONLY PART-TIME EMPLOYEES AT THE KITCHENER PLANT. WE WOULD MENTION THAT IT WAS ANTICIPATED THAT WITHIN THREE WEEKS OF THE HEARING OF THE APPLICATION, THE TOTAL OPERATIONS OF THE RESPONDENT, INCLUDING ITS HEAD OFFICE, WOULD BE MOVED TO KITCHENER.

13. IN ALL THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER COVERS THE EMPLOYEES OF THE RESPONDENT BOTH AT KITCHENER AND WATERLOO. IT IS CLEAR FROM THE EVIDENCE THAT THERE WAS A COMMON UNDERSTANDING BY THE PARTIES THAT THE AGREEMENT COVERED THE RESPONDENT'S EMPLOYEES AT KITCHENER AND WATERLOO AND THAT IT WAS AN OVERSIGHT THAT THE SCOPE CLAUSE OF THE AGREEMENT WAS NOT SO AMENDED DURING NEGOTIATION TO INCLUDE THE EMPLOYEES OF THE RESPONDENT AT KITCHENER.

14. WE ACCORDINGLY FIND THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED MARCH 29TH, 1968 COVERS THE EMPLOYEES OF THE RESPONDENT AT BOTH KITCHENER AND WATERLOO. THE APPLICATION OF THE APPLICANT THEREFORE IS UNTIMELY.

15. THE APPLICATION IS DISMISSED.

16446-69-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH CANADIAN LABOUR CONGRESS, AND A.F.L.-C.I.O. (APPLICANT) V. GOSHEN RUBBER OF CANADA LTD. (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: IAN E. REILLY FOR THE APPLICANT;
O.W. HRYNKIW, E.S. JOHNSON FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 22, 1969.

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3. THE RESPONDENT IN ITS REPLY RAISED THE OBJECTION THAT THE APPLICANT WAS PRECLUDED ACCORDING TO ITS CONSIDERATION, FROM TAKING INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT CONCERNED IN THIS APPLICATION. THE RESPONDENT IS ENGAGED IN THE MANUFACTURE AND SALE OF GASKETS AND SEALS FOR THE AUTOMOTIVE INDUSTRY. THE REPRESENTATIVE OF THE UNION AT THE HEARING ADVISED THE BOARD THAT THE UNION HAS INTERPRETED ITS CONSTITUTION TO ALLOW INTO MEMBERSHIP PERSONS WORKING IN INDUSTRIES OTHER THAN AS DESCRIBED IN THE CONSTITUTION AND HAS BEEN CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR EMPLOYEES IN THE WOODWORKING AND TEXTILE INDUSTRIES. MR. REILLY ASSURED THE BOARD THAT THE PERSONS FOR WHOM THIS APPLICATION IS MADE WOULD BE ADMITTED TO MEMBERSHIP IN THE APPLICANT. HAVING REGARD TO THE METROPOLITAN LIFE ASSURANCE CASE O.L.R.B. MONTHLY REPORT AUGUST 1967, 437 THE OBJECTION OF THE RESPONDENT IN THIS REGARD IS DENIED.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 28TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16453-69-R: RETAIL CLERKS LOCAL NO. 409 CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSN. (APPLICANT) V. MACDONALDS CONSOLIDATED LIMITED (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: CLIFFORD EVANS FOR THE APPLICANT, VICTOR L. PINCHIN FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 6, 1969.

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2. THE APPLICANT IN THE INSTANT CASE IS RETAIL CLERKS LOCAL 409, CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION. ALL OF THE APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT, HOWEVER, ARE IN THE NAME OF THE PARENT, RETAIL CLERKS INTERNATIONAL ASSOCIATION. WHILE THIS BOARD HAS HELD THAT EVIDENCE OF MEMBERSHIP IN A LOCAL UNION IS EVIDENCE OF MEMBERSHIP IN THE PARENT UNION OF THE PARTICULAR LOCAL, IT HAS NEVER HELD THAT EVIDENCE OF MEMBERSHIP IN THE PARENT IS PER SE EVIDENCE OF MEMBERSHIP IN A PARTICULAR LOCAL (SEE MILSON FLOORS LIMITED CASE, OLRB M.R. SEPT. 1966 419 AND BEAVER FOUNDATION LTD. CASE, OLRB M.R. OCT. 1967 652).

3. THERE IS NO DOCUMENTARY EVIDENCE BEFORE THE BOARD THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE MEMBERS OF RETAIL CLERKS LOCAL 409.

4. THE APPLICATION ACCORDINGLY IS DISMISSED.

16455-69-R: NURSES' ASSOCIATION GUELPH GENERAL HOSPITAL (APPLICANT)
V. THE BOARD OF COMMISSIONERS OF THE GUELPH GENERAL HOSPITAL
(RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: D.F.O. HERSEY, P. GARDNER, J. THOMAS
FOR THE APPLICANT, G.G. HURLBURT AND H. SHANTZ FOR THE RESPONDENT.

DECISION OF THE BOARD: August 6, 1969.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING
AGENT FOR ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE
RESPONDENT ENGAGED IN NURSING AND TEACHING. THE RESPONDENT SUBMITS
THAT THE NURSES ENGAGED IN TEACHING ARE NOT APPROPRIATE FOR INCLUSION
IN THE SAME UNIT AS NURSES ENGAGED IN NURSING SERVICES.

4. WHERE A HOSPITAL HAS ITS OWN TEACHING FACILITIES THE
PRACTICE OF THE BOARD HAS BEEN TO INCLUDE NURSES ENGAGED IN TEACHING
AND IN NURSING SERVICES IN THE SAME BARGAINING UNIT. THIS PRACTICE
IS BASED ON THE BOARD'S FINDING THAT THERE IS A SUFFICIENTLY CLOSE
INTERRELATIONSHIP BETWEEN THE NURSES WHO ARE TEACHERS AND THOSE IN
THE WARDS THAT THERE IS A COMMUNITY OF INTEREST BETWEEN THE TWO
GROUPS THAT MAKES THEM APPROPRIATE FOR INCLUSION IN THE SAME UNIT
(SEE BROCKVILLE GENERAL HOSPITAL CASE, OLRB M.R. JAN 1967 776, AND
RELIGIOUS HOSPITALLERS OF ST. JOSEPH'S HOTEL DIEU CASE, OLRB M.R.
APRIL 1968 52).

5. THE BOARD ACCORDINGLY FINDS THAT ALL REGISTERED AND
GRADUATE NURSES EMPLOYED BY THE RESPONDENT ENGAGED IN NURSING CARE
AND TEACHING, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE
RANK OF HEAD NURSE, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT
APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE
BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE
RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS
MADE, WERE MEMBERS OF THE APPLICANT ON JULY 29TH, 1969, THE TERMINAL
DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETER-
MINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE
TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1)
OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16460-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (INTERVENER).

- AND -

16468-69-R: THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: J. SACK, W.A. ACTON, J. BIRD AND D. LINDSAY FOR CANADIAN UNION OF PUBLIC EMPLOYEES, S.H. MURPHY AND E. PARK FOR THE RESPONDENT, DONALD A. EBBS, ERNEST L. BUTCHER AND CECIL GARROD FOR THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION.

DECISION OF THE BOARD: AUGUST 18, 1969.

1. THE ABOVE APPLICATIONS ARE CONSOLIDATED.
2. BOTH APPLICANTS HAVE APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE SAME EMPLOYEES OF THE RESPONDENT.
3. THE RESPONDENT CAME INTO EXISTENCE ON JANUARY 1ST, 1969 PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO, c. 122. PURSUANT TO THE PROVISIONS OF THAT ACT, THE RESPONDENT IS THE SUCCESSOR TO A NUMBER OF SCHOOL BOARDS WHICH FORMERLY EXISTED IN THE COUNTY OF PETERBOROUGH. INCLUDED AMONG THOSE SCHOOL BOARDS IS THE CITY OF PETERBOROUGH BOARD OF EDUCATION.
4. THE PETERBOROUGH BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION WAS FORMED IN 1952 AND AFTER OBTAINING VOLUNTARY RECOGNITION FROM THE CITY OF PETERBOROUGH BOARD OF EDUCATION, THE ASSOCIATION ENTERED INTO A NUMBER OF SUCCESSIVE COLLECTIVE AGREEMENTS COVERING THE CARETAKERS AND MAINTENANCE EMPLOYEES OF THE CITY OF PETERBOROUGH BOARD OF EDUCATION. AT THE HEARING IN THIS MATTER, AT THE REQUEST OF THE BOARD, THE CONSTITUTION FOR THE PETERBOROUGH BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION WAS FILED.
5. FOLLOWING AN UNSUCCESSFUL ATTEMPT BY THE PETERBOROUGH BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION TO BECOME CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED, THE PETERBOROUGH BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION, AT A MEETING HELD ON MAY 14TH, 1969, AMENDED

ITS CONSTITUTION BY CHANGING THE NAME OF THE ASSOCIATION TO READ "THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION". AT THAT MEETING, THE CONSTITUTION WAS ALSO AMENDED TO PERMIT THE ASSOCIATION TO TAKE INTO MEMBERSHIP ALL THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

6. AT THE MAY 14TH MEETING, THE FOLLOWING RESOLUTION WAS ADOPTED: "THAT ALL MEMBERS PAY INITIATION FEE OF \$2.00 AND SIGN A FORM SHOWING THEIR DESIRE TO JOIN THE ASSOCIATION." WHILE IT WAS ARGUED THAT THIS RESOLUTION INDICATED AN ATTEMPT TO DISBAND THE OLD ASSOCIATION AND FORM A NEW ASSOCIATION, ON ALL THE EVIDENCE BEFORE US WE MUST FIND THAT THE ORIGINAL ASSOCIATION CONTINUED IN EXISTENCE UNDER THE NEW NAME AND WHILE CERTAIN CONSTITUTIONAL AMENDMENTS WERE MADE THE ENTITY REMAINED THE SAME.

7. WHILE THE CANADIAN UNION OF PUBLIC EMPLOYEES CHALLENGED THE STATUS OF THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION AS A TRADE UNION, NO EVIDENCE WAS ADDUCED IN SUPPORT OF THE CHALLENGE. IT IS THE BOARD'S POLICY TO RECOGNIZE AN ORGANIZATION AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT IF THAT ORGANIZATION HAS BEEN PARTY TO A COLLECTIVE AGREEMENT WHICH HAS BEEN IN EXISTENCE FOR MORE THAN ONE YEAR SUBJECT TO REQUIRING SUCH ORGANIZATION TO FILE A COPY OF ITS CONSTITUTION. THE BOARD IN SUCH INSTANCE DOES NOT REQUIRE SUCH ORGANIZATION TO FORMALLY PROVE ITS STATUS AS A TRADE UNION. SOME OF THE REASONS FOR THIS POLICY ARE THAT IT OFTEN HAPPENS THAT THE ORGANIZATION HAS BEEN IN EXISTENCE FOR MANY YEARS AND THERE IS NO ONE AVAILABLE WHO WAS IN ATTENDANCE AT THE MEETINGS AT WHICH THE ORGANIZATION CAME INTO EXISTENCE AND ITS CONSTITUTION WAS ADOPTED. IN ADDITION, THE BOARD IS HESITANT TO TAKE ANY ACTION WHICH WOULD TEND TO SET ASIDE AN ESTABLISHED BARGAINING RELATIONSHIP WHICH HAS BEEN IN EXISTENCE FOR A SUBSTANTIAL PERIOD OF TIME. ACCORDINGLY, ON THE FACTS OF THIS CASE, SINCE WE HAVE FOUND THAT THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION IS THE SAME ENTITY AS THE PETERBOROUGH BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION AND SINCE THIS ASSOCIATION HAD AN ESTABLISHED BARGAINING RELATIONSHIP WITH SUCCESSIVE COLLECTIVE AGREEMENTS SINCE 1952 WITH THE CITY OF PETERBOROUGH BOARD OF EDUCATION, ONE OF THE PREDECESSOR BOARDS OF THE RESPONDENT IN THIS CASE, AND SINCE THE ASSOCIATION HAS FILED WITH THE BOARD A COPY OF ITS CONSTITUTION WHICH EVIDENCES THE FACT THAT IT IS A VIABLE ENTITY, AND IN THE ABSENCE OF EVIDENCE IN SUPPORT OF THE CHALLENGE TO ITS STATUS, THE BOARD ACCORDINGLY FINDS THAT THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

8. WHILE THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARE-TAKERS AND MAINTENANCE ASSOCIATION ATTEMPTED TO UPHOLD A DOCUMENT DATED JUNE 9TH, 1969 AS A COLLECTIVE AGREEMENT WHICH WOULD BE A BAR TO THE APPLICATION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, WE FIND ON THE FACTS OF THIS CASE THAT WHILE THE RESPONDENT HAD, AS EARLY AS FEBRUARY 25TH, 1969, AGREED TO GRANT VOLUNTARY RECOGNITION TO THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION UPON PROOF THAT THAT ASSOCIATION REPRESENTED THE MAJORITY OF ITS EMPLOYEES, SUCH PROOF WAS NOT GIVEN TO THE RESPONDENT ON JUNE 9TH, 1969, WHEN THE DOCUMENT WAS SIGNED. IN ADDITION, SUBSEQUENT TO THE SIGNING OF THE ABOVE DOCUMENT THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION WROTE TO THE RESPONDENT ON JULY 18TH, 1969 AND RENEWED ITS REQUEST THAT THE RESPONDENT GRANT VOLUNTARY RECOGNITION TO IT AND ATTACH A LIST OF PERSONS WHICH IT CLAIMED TO BE MEMBERS OF THE ASSOCIATION WHICH IT ALLEGED COMPRISED IN EXCESS OF FIFTY-FIVE PER CENT OF THE CARETAKING AND MAINTENANCE STAFF OF THE RESPONDENT. THE RESPONDENT, IN REPLY TO THIS REQUEST, ON JULY 25TH, 1969, AGREED TO RECOGNIZE THE ASSOCIATION AS SOLE BARGAINING AGENT FOR ITS EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. ALTHOUGH THIS REQUEST WAS MADE BY THE ASSOCIATION, THE ASSOCIATION ALSO APPLIED ON JULY 22ND, 1969 TO BE CERTIFIED FOR THE SAME EMPLOYEES.

9. IN VIEW OF THE FACT THAT THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION APPEARED TO BE HEADING IN ALL DIRECTIONS AT THE SAME TIME AND THE FACT THAT IN ADDITION TO THE CONTRADICTORY ACTIONS DESCRIBED THERE APPEARS TO BE SOME SERIOUS DOUBT AS TO THE AUTHORITY OF THE PERSON WHO SIGNED THE DOCUMENT ON JUNE 9TH ON BEHALF OF THE ASSOCIATION AND THE FACT THAT THE BARGAINING UNIT IN THIS MATTER INCLUDES PERSONS WITH RESPECT TO WHOM THE ASSOCIATION HAD NOT PREVIOUSLY BARGAINED, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT SIGNED ON JUNE 9TH, 1969 IS A COLLECTIVE AGREEMENT WHICH CONSTITUTES A BAR TO THE APPLICATION OF THE CANADIAN UNION OF PUBLIC EMPLOYEES. EVEN IF THE BOARD WERE TO FIND THAT THE DOCUMENT OF JUNE 9TH, 1969 WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(c) OF THE ACT, IN VIEW OF THE FACT THAT IT PURPORTS TO COVER PERSONS WHO WERE NOT FORMERLY REPRESENTED BY THE ASSOCIATION, THE DOCUMENT MUST BE CONSIDERED TO BE A FIRST AGREEMENT WITH RESPECT TO SUCH PERSONS. SINCE THE ASSOCIATION FAILED TO ESTABLISH THAT IT WAS ENTITLED TO REPRESENT A MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO, AND SINCE THE INSTANT APPLICATION WAS MADE DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE AGREEMENT WAS IN OPERATION, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 45A OF THE ACT, DECLARES THAT THE ASSOCIATION WAS NOT, FOR THE PURPOSES OF ENTERING INTO A COLLECTIVE AGREEMENT, ENTITLED TO REPRESENT ALL THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS SIGNED. THE SAID AGREEMENT THEREFORE CEASES TO OPERATE AS A COLLECTIVE AGREEMENT PURSUANT TO THE PROVI-

SIONS OF SECTION 45A(4) OF THE ACT AND IS ACCORDINGLY NOT A BAR TO THIS APPLICATION.

10. THE BOARD FINDS THAT CANADIAN UNION OF PUBLIC EMPLOYEES IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

11. THE BOARD FURTHER FINDS THAT IN CONFORMITY WITH THE REASONING SET OUT IN THE BOARD'S DECISION DATED MAY 8TH, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15561-68-M), SECTION 47A OF THE ACT IS APPLICABLE TO THE FACTS OF THIS CASE AND THAT SINCE THE PROVISIONS OF SECTION 47A(2) PROVIDE THAT "THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSONS TO WHOM THE BUSINESS WAS SOLD", WE MUST ACCORDINGLY FIND THAT THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION "CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT" FOR SOME OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

12. HAVING REGARD TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT (SUPRA) AND THE BOARD'S DECISION IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (SUPRA), THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE CANADIAN UNION OF PUBLIC EMPLOYEES ON JULY 31ST, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. HAVING REGARD TO THE REASONS CONTAINED IN THE CASES ABOVE REFERRED TO AND THE PROVISIONS OF SECTIONS 47A(5), (7) AND (10) OF THE ACT, AND FOR THE REASONS GIVEN BY THE BOARD IN THE NORTH BAY BOARD OF EDUCATION CASE, BOARD FILE NO. 16068-69-R, JULY 31, 1969, THE BOARD IS OF OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

15. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

16. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE CANADIAN UNION OF PUBLIC EMPLOYEES AND THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION.

17. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - TERMINATION

16463-69-R: WILLIAM PARKS (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 880 (RESPONDENT) V. ISLAND OF BOB-LO COMPANY (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: D.I. MCWILLIAMS, Q.C., AND W. PARKS FOR THE APPLICANT, R.G. FOLEY FOR THE RESPONDENT, C.G. RIGGS FOR THE INTERVENER.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: August 26, 1969.

1. THIS IS AN APPLICATION MADE UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES OF THE INTERVENER FOR WHOM IT IS THE BARGAINING AGENT.

2. IN SUPPORT OF THE APPLICATION THERE WAS FILED WITH THE BOARD TWO IDENTICAL TYPEWRITTEN DOCUMENTS, ONE DATED JULY 10TH, 1969, BEARING THE SIGNATURES OF FOUR PERSONS PURPORTING TO BE EMPLOYEES OF THE INTERVENER, AND THE OTHER DATED JULY 28TH, 1969, BEARING THE SIGNATURES OF FOURTEEN PERSONS PURPORTING TO BE EMPLOYEES OF THE INTERVENER. THE FOUR PERSONS WHOSE SIGNATURES APPEAR ON THE EARLIER DATED DOCUMENT ALSO APPEAR ON THE LATER DATED DOCUMENT.

3. THE EVIDENCE OF WILLIAM PARKS, THE APPLICANT, WHO IS EMPLOYED BY THE INTERVENER AS A TRACTOR DRIVER, IS AS FOLLOWS.

FOLLOWING INFORMAL DISCUSSIONS AMONG SOME OF THE EMPLOYEES, IT WAS DECIDED TO MAKE AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT PROVIDED THE COMPANY WAS PREPARED TO CONTINUE TO PROVIDE THE SAME BENEFITS WHICH THE EMPLOYEES HAD BEEN RECEIVING UNDER THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER EFFECTIVE FROM JULY 5TH, 1967 TO AUGUST 15TH, 1969. PARKS THEREUPON APPROACHED HIS FOREMAN WALTER HASTINGS AND ASKED HIM TO INQUIRE OF MANAGEMENT AS TO WHETHER THE EMPLOYEES WOULD CONTINUE TO RECEIVE THE SAME BENEFITS IF THE RESPONDENT UNION NO LONGER REPRESENTED THE EMPLOYEES. HASTINGS SUBSEQUENTLY TOLD PARKS THAT ONE OF THE MANAGERS, MR. BROWNING, HAD GIVEN ASSURANCES THAT THE EMPLOYEES WOULD ABSOLUTELY CONTINUE TO GET THE SAME BENEFITS THAT THEY WERE RECEIVING UNDER THE COLLECTIVE AGREEMENT. PARKS ALSO ASKED HASTINGS IF HE COULD RECOMMEND A LAWYER WHO HAD EXPERIENCE "IN THESE MATTERS". HASTINGS GAVE HIM THE NAME OF A LAWYER. PARKS THEREUPON COMMUNICATED WITH THE LAWYER WHO IN TURN PREPARED THE APPLICATION AND SUPPORTING DOCUMENTS. PARKS SECURED MOST OF THE SIGNATURES ON THE DOCUMENTS FROM EMPLOYEES DURING THEIR LUNCH BREAK AND THE REMAINING SIGNATURES AT THEIR HOMES. PARKS CONVEYED TO THE EMPLOYEES THE ASSURANCES WHICH HE HAD RECEIVED THAT THEY WOULD RECEIVE THE SAME BENEFITS REGARDLESS OF WHETHER OR NOT THE RESPONDENT CONTINUED TO BE THEIR BARGAINING AGENT. PARKS THEN RETURNED THE SIGNED DOCUMENTS TO THE LAWYER WHOM HE HAD RETAINED.

4. WHILE IT APPEARS FROM THE EVIDENCE THAT THE INTERVENER DID NOT BY DELIBERATE DESIGN LEND SUPPORT TO THE APPLICATION, THE FACT IS THAT PARKS, WHO WAS THE CHIEF INSTIGATOR OF THE APPLICATION, SOUGHT THE SUPPORT OF MANAGEMENT. BOTH BY RECOMMENDING A LAWYER AND GIVING ASSURANCES THAT THE EMPLOYEES WOULD CONTINUE TO RECEIVE THE SAME BENEFITS EVEN IF THE RESPONDENT CEASED TO BE THE EMPLOYEES' BARGAINING AGENT, THE MANAGEMENT OF THE COMPANY DID GIVE ENCOURAGEMENT AND SUPPORT TO THE APPLICATION. FURTHER, IT SEEMS CLEAR THAT PARKS USED THE ASSURANCES GIVEN BY MANAGEMENT AS AN INDUCEMENT TO THE EMPLOYEES. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO GIVE ANY WEIGHT TO THE DOCUMENTS FILED IN SUPPORT OF THE APPLICATION (SEE PIGOTT MOTORS (1961) LTD. CASE, CCH 63 CLLC 1129).

5. THE APPLICATION ACCORDINGLY IS DISMISSED.

DECISION OF BOARD MEMBER F.W. MURRAY: August 26, 1969.

1. I DISSENT.

2. I CONCLUDED FROM THE EVIDENCE THAT A DECISION TO FILE FOR AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT WAS MADE BY SOME EMPLOYEES, HOWEVER, A MAJORITY VOTED THAT THE APPLICATION SHOULD BE FILED, PROVIDING THE COMPANY UNDERTOOK TO MAINTAIN THE BENEFITS WHICH THE EMPLOYEES HAD BEEN RECEIVING UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

3. ON ALL OF THE EVIDENCE IN THIS CASE, I CANNOT CONCLUDE THAT PARKS, THE CHIEF INSTIGATOR OF THE APPLICATION, "SOUGHT THE SUPPORT OF MANAGEMENT".

4. THE MANAGEMENT WAS ONLY ASKED IF THEY WOULD CONTINUE TO MAINTAIN THE BENEFITS PREVIOUSLY RECEIVED. IT REQUIRED A YES OF NO ANSWER. IN THESE DAYS OF CONSTANTLY CHANGING WORKING CONDITIONS AND UPWARD WAGE ADJUSTMENTS, ANSWERING IN THE AFFIRMATIVE, AS THE COMPANY DID, COULD BE INTERPRETED AS AN ATTEMPT BY THE COMPANY TO INFLUENCE THE EMPLOYEES NOT TO LEAVE THE UNION. SURELY FROM THE COMPANY GIVING SUCH ASSURANCES WHEN BEING ASKED TO DO SO, THE BOARD SHOULD NOT CONCLUDE THAT THE EMPLOYEES WERE AWARE OF THE WISHES OF THE COMPANY INSOFAR AS THEIR BEING REPRESENTED BY A TRADE UNION IS CONCERNED.

5. FROM THE EVIDENCE I WOULD HAVE CONCLUDED THAT ALL ACTS WERE INITIATED BY THE EMPLOYEES, AND PARTICULARLY IN VIEW OF THE ORDER OF EVENTS, I DO NOT BELIEVE THAT THE FOREMAN GIVING THE NAME OF A LAWYER (HAVING BEEN ASKED TO RECOMMEND ONE BY THE APPLICANT) NOR THE FACT THAT THE COMPANY ASSURED THE APPLICANT THAT THEIR BENEFITS WOULD NOT BE CHANGED, HAVING BEEN ASKED FOR SUCH ASSURANCE, SHOULD BE FATAL TO THIS APPLICATION FOR TERMINATION.

6. I WOULD HAVE ACCEPTED THE PETITION AS BEING INDICATIVE OF THE TRUE WISHES OF THE EMPLOYEES, AND I WOULD HAVE ORDERED A REPRESENTATIVE VOTE AMONGST THE EMPLOYEES CONCERNED VOTING AS TO WHETHER OR NOT THEY WISHED TO CONTINUE TO BE REPRESENTED BY THE RESPONDENT.

INDEXED ENDORSEMENT - SUCCESSOR STATUS

16352-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN METAL WORKERS ASSOCIATION (PREDECESSOR TRADE UNION) V. LAKESHORE DIE CASTING LIMITED (EMPLOYER).

DECISION OF THE BOARD: August 1, 1969.

1. THIS IS AN APPLICATION UNDER SECTION 47 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT HAS ACQUIRED ALL THE RIGHTS, PRIVILEGES AND DUTIES OF THE PREDECESSOR TRADE UNION.

2. CANADIAN METAL WORKERS ASSOCIATION CALLED A MEETING FOR SATURDAY, JUNE 21ST, 1969, AT WHICH A RESOLUTION WAS PASSED IN FAVOUR OF MAKING THE PRESENT APPLICATION. THE NOTICE CALLING THE MEETING READ AS FOLLOWS:

"NOTICE

THERE IS TO BE UNION MEETING:

PLACE: FISCHER'S ROYAL HOTEL
ROOM: CROWN ROOM
DATE: JUNE 21ST, 1969, SATURDAY
TIME: 2.30 P.M.

EVERYONE PLEASE ATTEND!!!"

3. IT IS A STRICT REQUIREMENT OF THE BOARD IN CASES SUCH AS THESE THAT EACH MEMBER OF THE PREDECESSOR UNION BE EFFECTIVELY NOTIFIED OF THE CALLING OF THE MEETING. IT IS OF PRIME IMPORTANCE THAT SUCH NOTICE CONTAIN A STATEMENT OF THE PURPOSE FOR WHICH THE MEETING IS BEING CALLED. THE ABOVE NOTICE IS OBVIOUSLY DEFICIENT IN THIS REGARD. THE BOARD HAS SAID THAT IN SUCH CIRCUMSTANCES, A HEAVY ONUS LIES UPON THE APPLICANT TO SHOW THAT ALL MEMBERS OF THE PREDECESSOR UNION KNEW THE PURPOSE FOR WHICH THE MEETING WAS CALLED.

4. HAVING REGARD TO ALL THE EVIDENCE, BOTH ORAL AND DOCUMENTARY, THE BOARD IS NOT SATISFIED THAT THE APPLICANT HAS DISCHARGED THE HEAVY ONUS REFERRED TO ABOVE. FOR THAT REASON THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

16186-69-U: THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (APPLICANT)
V. SECTION 1 ADAMS, FRANK ET AL (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: B.H. STEWART, W. CHENERY, R. MCLELL AND
AND J.H. COO FOR THE APPLICANT; R. KOSKIE AND H. SCHUELER FOR THE
RESPONDENTS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
P.J. O'KEEFFE: AUGUST 12, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION OF THE RESPONDENTS FOR THE ALLEGED VIOLATION OF SECTION 54 OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT WITHDREW ITS APPLICATION WITH RESPECT TO GEORGE TAYLOR, WILLIAM CARLISLE, WERNER HATTICH, VIKTOR VINCZE, EDMOND DOUCETT AND JUOZAS PRISAS, AND THE APPLICATION WITH RESPECT TO THEM IS DISMISSED.

3. THE APPLICATION WITH RESPECT TO WILLIAM CZARNIK, THOMAS FERRIS, EDWIN GALIKOWSKI, WERNER HATTICH, ERIC LIEPELT, BARRETT REID, JAMES D. SHEARER, WILLIAM BUSHE AND PATRICK BELL IS DISMISSED FOR LACK OF EVIDENCE.

4. THE APPLICATION WITH RESPECT TO JOSEPH BLACK, RALPH BRISSON, LEASON CHAMBERS, JOHN DRAPER, NORMAN FERGUSON, CHRISTOPHER FORTNEY, PETER GARVEY, CLARENCE HAZZARD, JOSEPH HUSZAR, GEORGE KASZAS, KENLOCK WALTERS, EDMOUR LEGER, PETER LOCKETT, WILLIAM OATES, DAVID POGSON, SIDNEY SAXTON, ARTHUR WILSON AND EDWARD WOOD IS DISMISSED FOR REASON THAT THEY WERE NOT SERVED WITH THE NOTICE OF APPLICATION AND THERE WAS NO WAIVER BY COUNSEL ON THEIR BEHALF.

5. HAVING REGARD TO THE EVIDENCE, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE REMAINING RESPONDENTS NAMED IN SECTION 1 FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENTS IN SECTION 1 DID CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON MAY THE 9TH, 1969, THEY DID ENGAGE IN AN UNLAWFUL STRIKE.

6. THE BOARD FURTHER CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE REMAINING RESPONDENTS NAMED IN SECTION 2 ABOVE FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENTS IN SECTION 2 DID CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON MAY THE 12TH, 1969, THEY DID ENGAGE IN AN UNLAWFUL STRIKE.

7. THE BOARD FURTHER CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE REMAINING RESPONDENT NAMED IN SECTION 3 ABOVE FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT IN SECTION 3 DID CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON MAY THE 13TH, 1969, HE DID ENGAGE IN AN UNLAWFUL STRIKE.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

AUGUST 12, 1969.

WHILE I AM IN SYMPATHY WITH THE FINDING OF THE MAJORITY AS EXPRESSED IN PARAGRAPH 4 OF THEIR DECISION, I MUST STATE THAT SUCH FINDING WOULD APPEAR TO BE CONTRARY TO THAT MADE BY THE MAJORITY OF THE BOARD IN FRASER-BRACE ENGINEERING COMPANY LIMITED CASE (BOARD FILE NO. 15963-69-U). IN ALL OTHER RESPECTS I AM IN AGREEMENT WITH THE DECISION.

INDEXED ENDORSEMENTS - SECTION 65

16174-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. MANIS METAL MANUFACTURING LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: LORNE INGLE AND E. BRIGINSHAW FOR
THE APPLICANT; RUSSELL KRONICK FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 1, 1969.

1. THE COMPLAINANT FILED TWO COMPLAINTS AGAINST THE RESPONDENT. ONE COMPLAINT, BOARD FILE NO. 16174-69-U, HAS REFERENCE TO ALLAN ROSE, ANDRE CADIEUX, RENE CYR, LEN FARHEAD AND ALESSANDRO ANTONACCI. THE OTHER COMPLAINT, BOARD FILE NO. 16350-69-U HAS REFERENCE ONLY TO ALLAN ROSE. EACH COMPLAINT IS BROUGHT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT AND EACH ALLEGES THAT THE AFOREMENTIONED AGGRIEVED WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE PARTIES AGREED THAT BOTH CASES BE HEARD TOGETHER.

2. THE AGGRIEVED IN THE COMPLAINT REFERRED TO IN BOARD FILE NO. 16174-69-U WERE DISCHARGED BY THE RESPONDENT ON APRIL 29, 1969.

3. THE AGGRIEVED IN THE COMPLAINT REFERRED TO IN BOARD FILE NO. 16350-69-U WAS REINSTATED IN EMPLOYMENT ON OR ABOUT JUNE 2, 1969 AND WAS DISCHARGED AGAIN ON JUNE 5, 1969 BECAUSE, THE RESPONDENT STATES, HE REFUSED TO WORK OVERTIME.

4. WE PROPOSE TO DEAL WITH FILE NO. 16174-69-U FIRST.

5. THE ALLEGATION OF VIOLATION CONTAINS ALL THE ALTERNATIVES IN SECTION 50(A). THE PARTICULARS, IF THEY MAY BE SO CALLED, SET OUT IN THE COMPLAINT STATED, IN SUMMARY FORM, THAT:

ALL AGGRIEVED WERE MEMBERS OF THE UNION AND WERE
ACTIVE IN ITS ORGANIZING CAMPAIGN;

ALL AGGRIEVED HAD ENGAGED IN PUBLICIZING A UNION MEETING CALLED FOR TUESDAY, APRIL 29, 1969;

ON APRIL 29TH, PRIOR TO 10:00 A.M., PAUL VICHES AS FOREMAN, OVERHEARD EARL CONNOLLY TELLING AN EMPLOYEE ABOUT THE MEETING.

6. THE EVIDENCE ESTABLISHED THAT A UNION MEETING HAD BEEN CALLED FOR APRIL 29TH, THE SAME DATE UPON WHICH THE DISCHARGES TOOK PLACE.

7. ASSUMING THE FACTS IN THE FIRST TWO ALLEGATIONS TO HAVE BEEN PROVEN, THE TASK WOULD STILL REMAIN TO THE COMPLAINANT TO OFFER EVIDENCE, WHICH MAY BE INFERENTIAL, INDICATING THAT THE RESPONDENT HAD KNOWLEDGE OF THOSE FACTS. THE ALLEGATION WITH RESPECT TO CONNOLLY IS, WE BELIEVE, DIRECTED TOWARDS THAT END. COUNSEL FOR THE RESPONDENT CONDUCTED A VIGOROUS CROSS-EXAMINATION OF ALL WITNESSES IN ORDER, WE ASSUME, TO ESTABLISH, FOR HIS PURPOSES, THAT THEIR ACTIVITIES HAD TAKEN PLACE ON COMPANY TIME AND COMPANY PREMISES. ALL THE WITNESSES WERE INSISTENT THAT THEY HAD BEEN MOST CAREFUL TO KEEP THE ORGANIZATIONAL CAMPAIGN SECRET FROM MANAGEMENT AND HAD NOT, WITH ONE EXCEPTION, DISCUSSED IT DURING WORKING HOURS. EARL CONNOLLY WAS CALLED BY THE COMPLAINANT. HE DENIED THE TRUTH OF THE ALLEGATION THAT HE HAD MADE ANY STATEMENT WITH RESPECT TO THE MEETING WITHIN THE HEARING OF PAUL VICHES. VICHES WAS NOT CALLED BY EITHER PARTY. THUS WHAT WOULD APPEAR TO HAVE BEEN THE MAIN POINT RELIED UPON TO ESTABLISH KNOWLEDGE OF THE MEETING BY THE COMPANY WAS DESTROYED BY THE COMPLAINANT'S OWN WITNESS. IN ADDITION, THE ONLY WITNESS WHO IN ANY REAL WAY SUPPORTED THE ALLEGATION WITH RESPECT TO BEING ENGAGED IN ORGANIZATION ACTIVITY AND PUBLICATION OF THE MEETING WAS ROSE. HE WAS THE ONE WHO CONTACTED THE UNION AND ARRANGED WITH ITS REPRESENTATIVE FOR A MEETING ON APRIL 29TH. HE TOLD ALL THE EMPLOYEES ABOUT THE UNION AND ABOUT THE MEETING. HE STATED HE HAD STARTED TALKING ABOUT THE UNION IN FEBRUARY 1969 AND DISCUSSED IT EVERY DAY WITH EMPLOYEES. SOME OF THESE DISCUSSIONS TOOK PLACE IN THE LUNCH ROOM WHICH WAS ALSO USED BY FOREMEN.

8. INsofar AS THE OTHER AGGRIEVED NAMED IN THE FOREGOING COMPLAINT ARE CONCERNED, THERE IS LEFT LITTLE MORE THAN THE FACT THAT THEY WERE LAID OFF ON THE SAME DATE THAT THE UNION MEETING WAS CALLED. WE FIND THIS SOMEWHAT TENUOUS GROUNDS, STANDING, AS IT DOES, VIRTUALLY ALONE, FOR SUPPORTING AN ALLEGATION OF VIOLATION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

9. THE COMPLAINT IN BOARD FILE NO. 16174-69-U IS, THEREFORE, DISMISSED WITH RESPECT TO CADIEUX, CYR, FARHEAD AND ANTONACCI. THEY ARE NOT CONCERNED WITH THE OTHER FILE.

10. THE SITUATION WITH RESPECT TO THE CASE OF ALLAN ROSE (FILE NO. 16350-69-U) IS DIFFERENT. AS ALREADY NOTED, ROSE WAS REINSTATED FOLLOWING HIS DISCHARGE ON APRIL 29TH. THERE IS NO DOUBT WHATEVER THAT THE RESPONDENT KNEW THAT, AT THE TIME OF HIS REINSTATEMENT, ROSE WAS A MEMBER OF THE UNION, SINCE HE WAS ONE OF THE AGGRIEVED NAMED IN THE OTHER COMPLAINT. THE QUESTION IS, WAS HIS SECOND DISCHARGE TRULY BASED UPON HIS REFUSAL TO WORK OVERTIME, OR WAS IT MOTIVATED BY THE FACT THAT HE WAS ACTIVE IN THE UNION? IT IS TO BE NOTED THAT HIS REINSTATEMENT TOOK PLACE AFTER INVESTIGATION OF THE MATTER BY THE LABOUR RELATIONS BOARD COMMENCED. IT WAS DONE, THE COMPANY SAID, IN ORDER TO HELP THE OFFICER SETTLE THE MATTER.

11. EVERY WITNESS CALLED BY THE UNION CONSISTENTLY STATED THAT DURING THE WHOLE COURSE OF THEIR EMPLOYMENT THEY HAD, ON NUMEROUS OCCASIONS, BEEN ASKED TO WORK OVERTIME AND HAD REFUSED WITH IMPUNITY. IN ADDITION, EACH WITNESS TESTIFIED THAT HE HAD NEVER KNOWN OF ANY EMPLOYEE OF THE COMPANY EVER BEING DISCHARGED OR DISCIPLINED IN ANY WAY BECAUSE OF A REFUSAL TO WORK OVERTIME.

12. THERE IS NOTHING IN THE EVIDENCE OF THE RESPONDENT'S WITNESSES TO COUNTERACT IN ANY WAY THAT OF THE COMPLAINANT'S ON THE QUESTION OF THE CUSTOM PREVAILING WITH RESPECT TO REFUSAL TO WORK OVERTIME. FURTHERMORE, THERE WAS NO SUGGESTION THAT ANY NOTIFICATION TO EMPLOYEES OF A CHANGE IN POLICY WAS ISSUED BY THE RESPONDENT. IN ADDITION, NO WARNING WAS GIVEN ROSE AT THE TIME THAT A REFUSAL WOULD ENTAIL DISCHARGE. ROSE DID SAY THAT BAIRD, THE PRODUCTION MANAGER, ASKED HIM TO RECONSIDER HIS DECISION TO WORK OVERTIME, BUT HE AGAIN, REFUSED. NO ATTEMPT WAS MADE BY THE RESPONDENT TO ENLARGE UPON THIS STATEMENT, NOR WAS IT PURSUED IN CROSS-EXAMINATION. WE DO NOT THINK IT COULD BE CONSTRUED AS A WARNING OF IMPENDING DISCHARGE IN THE CIRCUMSTANCES AND HAVING REGARD TO THE PREVIOUS CONDUCT ON SUCH OCCASIONS.

13. INCIDENTALLY, THERE WAS SOME EVIDENCE THAT THE CUSTOM OF THE RESPONDENT OF PAYING STRAIGHT TIME FOR OVERTIME WAS ONE OF THE REASONS THE EMPLOYEES WERE ORGANIZING AND THAT ONE OF THE AGGRIEVED, AT LEAST, DECLINED TO WORK OVERTIME FOR THAT VERY REASON. OVERTIME, IT WOULD SEEM, WAS A SORE POINT WITH THE EMPLOYEES AND A POINT OF FRICTION.

14. IN VIEW OF THE TOTAL ABSENCE OF EXPLANATION BY THE RESPONDENT FOR ITS SUDDEN CHANGE IN POLICY ON OVERTIME, A MATTER LYING EXCLUSIVELY WITHIN ITS KNOWLEDGE AND BEYOND THE REACH OF THE COMPLAINANT, WE ARE FORCED TO CONCLUDE ROSE'S REFUSAL TO ACCEPT THE WORK WAS SEIZED UPON BY THE RESPONDENT AS A MERE PRETEXT FOR DISMISSING HIM FOR WHAT IT HOPED MIGHT APPEAR TO BE JUST CAUSE.

15. HAVING IN MIND THE LEADING PART PLAYED BY ROSE IN THE ORGANIZATION OF THE UNION OVER A CONSIDERABLE TIME IN THE PLANT, WHICH IS A SMALL ONE, WE FIND IT MOST DIFFICULT TO BELIEVE THE RESPONDENT'S TESTIMONY THAT IT WAS UNAWARE OF THE NATURE OF HIS ACTIVITIES. THE REASONS FOR THE ORIGINAL LAY OFF WERE SAID TO INCLUDE THE FACT THAT CERTAIN EMPLOYEES WERE TALKING DURING WORKING HOURS AND MOVING ABOUT THE PLANT THAT "THEY WERE TROUBLE MAKERS"; THAT THE RESPONDENT HAD HAD DIFFICULTIES WITH THEM - THAT "THEY WERE NOT AT THEIR WORK". IN THE ABSENCE OF SPECIFIC EVIDENCE, WE MUST CONCLUDE THAT ROSE WAS CONSIDERED BY THE RESPONDENT TO FALL INTO THIS VAGUE CATEGORY. IT WOULD BE STRETCHING CREDULITY TO ACCEPT THAT THE RESPONDENT ALTHOUGH PURPORTING TO LAY PEOPLE OFF FOR THESE REASONS, MADE NO ATTEMPT TO FIND OUT WHAT WAS CAUSING THIS ACTIVITY AMONG ITS EMPLOYEES. IN ANY EVENT, IT IS QUITE BEYOND DISPUTE, AS ALREADY OBSERVED, THAT AT THE TIME OF HIS SECOND DISCHARGE, THE COMPANY WAS FULLY AWARE OF ROSE'S UNION MEMBERSHIP.

16. IN THE LIGHT OF ALL THE EVIDENCE, INCLUDING THE CREDIBILITY OF WITNESSES, WE CAN ONLY CONCLUDE ON THE BALANCE OF PROBABILITIES THAT THE TRUE REASON FOR THE DISCHARGE OF ROSE ON JUNE 5, 1969, WAS NOT HIS REFUSAL TO WORK OVERTIME, BUT RATHER HIS ACTIVITIES ON BEHALF OF THE UNION. THIS IS CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

17. THE BOARD THEREFORE DETERMINES THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY ALLAN ROSE TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD RECEIVED UP TO AND INCLUDING JUNE 5, 1969.

18. THE BOARD FURTHER DETERMINES THAT THE RESPONDENT PAY TO ALLAN ROSE THE SUM OF \$140.00 FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BETWEEN THE DATE OF DISCHARGE AND THE DATE OF THE HEARING OF THIS MATTER.

19. THE BOARD DIRECTS THAT THE PARTIES MEET WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS OR OTHER BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY BE HEREAFTER SUSTAINED BY ALLAN ROSE BETWEEN JULY 15, 1969 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT WHICH SHALL BE PAID TO HIM. IN DEFAULT OF AGREEMENT BETWEEN THE PARTIES WITHIN 14 DAYS OF THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY AGREE UPON, AS THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING TO DETERMINE THE ADDITIONAL AMOUNT, IF ANY, TO BE PAID TO ALLAN ROSE.

16196-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V.
ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED
(RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: LORNE INGLE, KEN LEVAC AND D. BOUMA
FOR THE APPLICANT; COLIN MORLEY AND K. WAKELING FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
F.W. MURRAY: AUGUST 1, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.
2. THE COMPLAINANT ALLEGES THAT BENNY CHRISTENSEN, MIKROS KINCSES AND DOWE BOUMA WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 59A OF THE ACT.
3. THE COMPLAINANT REQUESTS THE BOARD TO REINSTATE THE AGGRIEVED PERSONS IN THEIR EMPLOYMENT WITH FULL COMPENSATION FOR LOSS OF WAGES AND SUCH FURTHER AND OTHER RELIEF AS THE BOARD MAY DEEM JUST.
4. ON FRIDAY, MAY 9, 1969, CHRISTENSEN AND KINCSES WERE DISCHARGED BY MR. WAKELING, PERSONNEL SUPERINTENDENT OF THE RESPONDENT. BOUMA WAS DISCHARGED ON MAY 15, 1969. THE REASON GIVEN FOR THE DISCHARGE BEING THAT HE HAD A BAD RECORD OF ABSENCES FROM WORK AND LATENESS.
5. CHRISTENSEN AND KINCSES APPEARED AS WITNESSES AT A HEARING BEFORE THE ONTARIO LABOUR RELATIONS BOARD ON FEBRUARY 24, 1969, IN RESPONSE TO SUBPOENAS ISSUED BY THE COMPLAINANT HEREIN. BOUMA ACTED AS A SCRUTINEER FOR THE COMPLAINANT AT A REPRESENTATION VOTE ORDERED BY THE BOARD AS THE RESULT OF THE HEARING. IT WAS THE CONTENTION OF THE COMPLAINANT THAT IT WAS THESE ACTIVITIES ON BEHALF OF THE UNION WHICH MOTIVATED THE COMPANY IN DISCHARGING THE EMPLOYEES.
6. THE REASON GIVEN BY THE RESPONDENT FOR THE RELEASE OF CHRISTENSEN WAS THAT HE WAS ABSENT TOO OFTEN AND HAD A RECORD OF LATENESS. THE REASON GIVEN FOR KINCSES' DISMISSAL WAS FOR DRINKING ALCOHOL ON THE PREMISES OF THE COMPANY.
7. MR. WAKELING TESTIFIED ON BEHALF OF THE COMPANY. HE STATED THAT IN LATE APRIL, THERE WAS AN EXCESS INVENTORY AND THAT THE COMPANY DECIDED TO REDUCE PRODUCTION AND PERSONNEL.

THE DECISION WAS TO CUT THE WORK FORCE IN HALF. THE PERSONNEL DEPARTMENT WAS INSTRUCTED TO REVIEW PAST RECORDS OF ALL EMPLOYEES WITH A VIEW TO DETERMINING WHO SHOULD GO. THE WORK FORCE AT THE END OF APRIL COMPRISED APPROXIMATELY 205 EMPLOYEES. TWO LAY-OFFS WERE CONDUCTED; THE FIRST LAY-OFF REDUCED THE WORK FORCE TO APPROXIMATELY 135 EMPLOYEES AND THE SECOND LAY-OFF REDUCED THE NUMBER TO APPROXIMATELY 114.

8. ACCORDING TO MR. WAKELING, THE AGGRIEVED PERSONS WERE INCLUDED IN A GROUP OF EMPLOYEES WHICH THE COMPANY DECIDED WOULD BE PERMANENTLY LAID-OFF AS THE RESULT OF THEIR RECORDS. THE EVIDENCE IS THAT IN ADDITION TO THE 3 AGGRIEVED, THE COMPANY, IN THE COURSE OF THE LAY-OFF, PERMANENTLY TERMINATED 5 OTHER EMPLOYEES FOR THE SAME GENERAL REASONS AS THOSE THAT GOVERNED THE RELEASE OF THE AGGRIEVED. IT WAS THE SUBMISSION OF THE RESPONDENT, THEREFORE, THAT THE AGGRIEVED WERE SIMPLY CAUGHT IN THE SAME NET AS THE OTHER EMPLOYEES SELECTED FOR TERMINATION ON THEIR WORK RECORD AND NOT BECAUSE OF ANY PARTICIPATION IN UNION ACTIVITIES.

9. A CONSIDERABLE AMOUNT OF EVIDENCE WAS ENTERED WITH RESPECT TO THE WORK RECORDS' ATTENDANCE AND GENERAL CONDUCT OF THE AGGRIEVED. THERE WERE SOME DISCREPANCIES IN THE ACCURACY OF THE RECORDS SUBMITTED IN SUPPORT OF THE COMPANY'S DECISION. THE PURPOSE OF THIS INQUIRY, HOWEVER, IS NOT TO LOOK INTO THE QUESTION AS TO WHETHER THE COMPANY HAD JUST CAUSE FOR TERMINATION, BUT RATHER AS TO WHETHER THE ACTION IT TOOK WAS MOTIVATED BY OPPOSITION TO THE PART THESE EMPLOYEES PLAYED WITH RESPECT TO THE UNION OR WAS FOR THE REASON ADVANCED BY THE COMPLAINANT. IT IS, OF COURSE, OF SOME RELEVANCE TO INQUIRE AS TO WHETHER THE REASONS GIVEN FOR THE DISCHARGE ARE MERE PRETEXTS OR EXCUSES TO COVER THE TRUE REASON FOR DISCHARGE.

10. IN THIS RESPECT, WE WOULD ADVERT TO THE EVIDENCE GIVEN BY THE WITNESS EDWARD HOEKSTRA, WHO WAS CALLED BY THE UNION. HE TESTIFIED THAT IN THE WEEK PRIOR TO THE HOLDING OF A REPRESENTATION VOTE, WHICH AS NOTED TOOK PLACE ON APRIL 28TH, HE WAS INSTRUCTED TO FIND OUT WHO WAS DOING THE CAMPAIGNING FOR THE STEELWORKERS IN THE PLANT. IN ANY EVENT, HE STATED THAT HE HAD NOT MADE ANY REPORT WITH RESPECT TO THIS. THERE WERE APPARENTLY AT THAT TIME A NUMBER OF UNIONS INTERESTED IN THE ORGANIZATION OF THE PLANT, BUT HOEKSTRA'S INSTRUCTIONS, ACCORDING TO HIS EVIDENCE, WERE CONFINED TO THE STEELWORKERS. AT THE TIME THAT HOEKSTRA GAVE HIS TESTIMONY, HIS EMPLOYMENT HAD BEEN TERMINATED BY THE RESPONDENT. WILFRID FITZMAURICE, A GENERAL FOREMAN OF THE RESPONDENT WHO HOEKSTRA HAD STATED HAD GIVEN HIM THE INSTRUCTIONS ABOVE REFERRED TO, DENIED THAT HE HAD GIVEN ANY INSTRUCTIONS TO HOEKSTRA WITH RESPECT TO THE STEELWORKERS OR TO ANY OTHER UNION, AND THAT INSOFAR AS HE WAS AWARE, NOBODY IN THE COMPANY HAD GIVEN ANY SUCH INSTRUCTIONS.

IT IS, OF COURSE, CLEAR THAT AT THE TIME OF THE DISCHARGE, THE COMPANY WAS WELL AWARE OF THE FACT THAT CHRISTENSEN AND KINGSLEY HAD APPEARED BEFORE THE BOARD AS A RESULT OF SUBPOENAS AND THAT BOUMA HAD ACTED AS A SCRUTINEER.

11. WE ACCEPT THE EVIDENCE OF THE COMPANY THAT THE LAY-OFF WAS DICTATED BY THE INVENTORY SITUATION DESCRIBED AND THAT THE DECISION TO LAY-OFF EMPLOYEES HAD NOTHING TO DO WITH UNION ACTIVITY IN THE PLANT. IT DOES NOT SEEM UNREASONABLE THAT THE RESPONDENT SHOULD TAKE ADVANTAGE OF THE LAY-OFF TO CALL OUT EMPLOYEES WHOM IT WOULD PREFER NOT TO RE-ENGAGE AT A FUTURE DATE. IT WOULD BE UNDER NO COMPULSION TO RESTRICT THE PEOPLE TO BE REJECTED TO THOSE FOR WHOM IN OTHER CIRCUMSTANCE, JUST CAUSE FOR DISCHARGE WOULD REQUIRE TO BE SHOWN. NO SUCH REQUIREMENT EXISTS IN THE CIRCUMSTANCES BEFORE US. ON THE OTHER HAND, AS ALREADY INTIMATED, SELECTION OF PEOPLE FOR PERMANENT LAY-OFF ON THE GROUNDS THAT THEY ARE MEMBERS OF A UNION IS ANOTHER MATTER. UNION MEMBERSHIP AND ACTIVITY ON BEHALF OF A UNION DOES NOT, HOWEVER, IMMUNIZE EMPLOYEES AGAINST NORMAL INDUSTRIAL PROCEDURES SIMPLY BECAUSE THE EMPLOYER IS AWARE OF THEIR UNION CONNECTIONS, NOR DOES ANY PRESUMPTION ARISE AGAINST A RESPONDENT COMPANY BECAUSE OF THIS KNOWLEDGE, ALTHOUGH SUCH KNOWLEDGE MAY HAVE EVIDENTIARY VALUE IN PARTICULAR CIRCUMSTANCES.

12. ON THE BASIS OF ALL THE EVIDENCE, WE FIND THAT THE AGGRIEVED EMPLOYEES WERE TERMINATED AS PART OF GENERAL SCHEME REFERRED TO EARLIER TO REDUCE THE OVER ALL COMPLEMENT AND TO PERMANENTLY LAY-OFF EMPLOYEES WHO DID NOT MEET THE COMPANY'S REQUIREMENTS IN WORK HABITS AND CONDUCT.

13. THE COMPLAINANT HAS NOT DISCHARGED THE ONUS UPON IT TO ESTABLISH THAT THE EMPLOYEES CONCERNED WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: August 1, 1969.

I DISSENT.

THE EVIDENCE AND THE CREDIBILITY OF THE WITNESSES, AND IN PARTICULAR THE TESTIMONY OF EDWARD HOEKSTRA, LEADS ME TO BELIEVE THE AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO SECTION 59(A).

I THEREFORE FIND THAT THESE PERSONS SHOULD BE RE-INSTATED FORTHWITH IN THE SAME OR LIKE EMPLOYMENT WITH FULL COMPENSATION FOR TIME LOST, AND I SO DIRECT.

16266-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V.
INDALPRIME LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: LORNE INGLE FOR THE APPLICANT;
J. PERRY BORDEN AND H. LAZAR FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F. IRWIN:
AUGUST 1, 1969.

1. THIS IS A COMPLAINT BROUGHT UNDER SECTION 65. THE COMPLAINANT ALLEGES THAT ANTONIO IERACI HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ASKS THAT THE AGGRIEVED ANTONIO IERACI BE REINSTATED IN EMPLOYMENT WITH FULL COMPENSATION FOR LOSS OF WAGES.

2. ON THURSDAY, JUNE 5, 1969, AT ABOUT 8:30 IN THE MORNING, IERACI APPROACHED A FELLOW EMPLOYEE, LUIGI LIETO, TO GET HIS TELEPHONE NUMBER AND HIS ADDRESS. LIETO REFUSED TO GIVE THE INFORMATION AND A FIGHT BROKE OUT IN WHICH BLOWS WERE EXCHANGED. IERACI, WHO HAD JOINED THE UNION HIMSELF TWO DAYS EARLIER, WAS SEEKING THE INFORMATION IN ORDER TO GO TO LIETO'S HOME TO TRY TO SIGN HIM UP IN THE UNION. LIETO HAD STRONG OBJECTIONS TO GIVING THE INFORMATION AND WE ARE PERSUADED THAT IERACI HAD EQUALLY STRONG INTENTIONS OF GETTING IT.

3. THE FIGHT IN WHICH IERACI WAS BURNED BY LIETO'S CIGARETTE AND SCRATCHED IN THE FACE AND IN WHICH LIETO WAS TEMPORARILY INCAPACITED BY A BLOW FROM IERACI, WAS INVESTIGATED BY THE PARTICIPANT'S SUPERVISOR THOMPSON. THOMPSON DISCHARGED IERACI FOLLOWING THE INQUIRY. THOMPSON, ACCORDING TO IERACI AND LIETO, ASKED THE FORMER IF IT WAS TRUE HE WAS ORGANIZING THE UNION. THOMPSON DENIES ASKING THIS, BUT WE PREFER TO ACCEPT THE EVIDENCE OF LIETO ON THIS POINT. IERACI DENIED THAT HE KNEW ANYTHING ABOUT THE UNION. IT IS CLEAR THAT THOMPSON SPENT SOME TIME TALKING WITH LIETO ABOUT THE MATTER WHEN IERACI WAS NOT PRESENT. THOMPSON STATED THAT HE ASKED IERACI FOR HIS VERSION OF WHAT HAPPENED, HE TOLD HIM THAT THEY SPOKE IN ITALIAN AND HE WOULD NOT UNDERSTAND IT. THAT IS ALL IERACI SAID ON HIS OWN BEHALF. THOMPSON SAID HE ASKED TWO OR THREE PEOPLE ABOUT THE FIGHT, BUT THAT NOBODY KNEW THE FULL STORY. HE SAID THAT SINCE IERACI HAD HAD AN OPPORTUNITY TO TELL HIS STORY AND HAD NOT DONE SO, HE HAD TO ACCEPT LIETO'S VERSION AND DISCHARGED HIM BECAUSE HE WAS THE INSTIGATOR OF THE FIGHT AND THAT FIGHTING WAS PARTICULARLY HAZARDOUS BECAUSE OF THE AMOUNT OF GLASS ABOUT.

4. IT IS OUR OPINION THAT AT THE TIME HE DISCHARGED IERACI THOMPSON KNEW, FOLLOWING HIS CONVERSATION WITH LIETO, THAT IERACI WAS WORKING ON THE ORGANIZATION OF THE UNION AND THAT WHEN HE ASKED IERACI IF HE WAS SO ENGAGED, HE KNEW THE TRUTH OF THIS NOTWITHSTANDING IERACI'S DENIAL.

5. THERE CAN BE LITTLE DOUBT THAT A FIGHT OF THE NATURE OF THAT THAT TOOK PLACE BETWEEN IERACI AND LIETO CALLED FOR DISCIPLINARY ACTION OF SOME SORT. THAT IS THE NORMAL EXPECTATION IN ANY INDUSTRIAL PLANT IN SUCH CIRCUMSTANCES. IN THIS INSTANCE, THERE WAS THE ADDED DANGER OF SERIOUS INJURY BECAUSE OF THE GLASS. THE QUESTION RAISED IN THIS INSTANCE IS WHETHER THE REAL REASON IERACI WAS DISCIPLINED AND LIETO WAS NOT, WAS DUE TO THE FORMER'S UNION ACTIVITY. IT IS A PARTICULARLY DIFFICULT QUESTION BECAUSE THE ONLY UNION ACTIVITY OF WHICH, ON THE EVIDENCE, THOMPSON WAS AWARE IS INEXTRICABLY BOUND UP IN THE FIGHT ITSELF. IT IS TO BE RECOLLECTED ALSO THAT THOMPSON DID NOT HAVE THE BENEFIT OF IERACI'S VERSION OF THE FIGHT, BY THE LATTER'S OWN CHOICE, AT THE TIME HE DECIDED TO DISCIPLINE HIM. VIEWED FROM THAT BASIS AND APART FROM THE UNION ACTIVITY FOR THE MOMENT, IERACI WOULD CLEARLY APPEAR TO BE THE AGGRESSOR AND, AS SUCH, MIGHT NORMALLY BE EXPECTED TO BE TREATED WITH GREATER SEVERITY THAN LIETO. IT WOULD SEEM TO US TO BE A REASONABLE CONCLUSION FOR THOMPSON TO REACH ON THE BASIS OF THE EVIDENCE BEFORE HIM. IT IS TO BE REMEMBERED THAT THERE WAS NO ONUS UPON THOMPSON TO PROVIDE A DEFENCE FOR IERACI WHEN HE HIMSELF DECLINED TO ADVANCE ONE. IN OUR OPINION, IERACI IN REFUSING TO DEFEND HIMSELF, CLEARLY INVITED THE OBVIOUS CONSEQUENCES AND THOMPSON'S KNOWLEDGE OF HIS UNION ACTIVITIES CANNOT PROVIDE AN IMMUNITY WHICH WOULD NOT OTHERWISE BE AVAILABLE TO HIM.

6. FURTHERMORE, IF WE ASSUME THAT THOMPSON DISCHARGED IERACI FOR HIS UNION ACTIVITIES AS REPORTED TO HIM BY LIETO, A QUESTION ARISES AS TO WHETHER SUCH ACTIVITIES, IN ANY EVENT, CONSTITUTE THE EXERCISE OF RIGHTS UNDER THE ACT. THE INESCAPABLE FACT IS THAT THE FIGHT BROKE OUT ONLY BECAUSE OF IERACI'S PERSISTENCE IN ATTEMPTING WITH, IN OUR OPINION, EXTRAORDINARY ZEAL TO CARRY ON HIS ORGANIZATIONAL ACTIVITIES ON COMPANY'S PREMISES DURING LIETO'S AND HIS WORKING HOURS, AND THAT RESULTED IN LOST TIME TO BOTH OF THEM AND INTERRUPTION OF THE WORK OF OTHERS. IERACI FRANKLY ADMITTED THAT HE WAS TRYING TO OBTAIN LIETO'S ADDRESS AND PHONE NUMBER TO GET HIM TO JOIN THE UNION. IT IS EQUALLY CLEAR THAT LIETO KNEW THAT WAS WHY IERACI WAS VIRTUALLY HOUNDING HIM FOR THIS INFORMATION. IT IS OBVIOUS THAT BOTH FELT THAT IF LIETO GAVE THE ADDRESS AND TELEPHONE NUMBER, THAT WOULD BE TANTAMOUNT TO SIGNING A CARD. BY VIRTUE OF THE PROVISIONS OF SECTION 53 OF THE ACT, ACTIVITIES OF THIS NATURE ARE NOT AUTHORIZED UNDER THE ACT AND MUST BE CONSIDERED TO HAVE BEEN UNDERTAKEN AT THE RISK OF IERACI.

7. HAVING REGARD TO ALL OF THE FOREGOING THEREFORE, WE FIND THAT THE COMPLAINANT HAS FAILED TO DISCHARGE THE ONUS THAT RESTS UPON IT TO ESTABLISH BY SUBSTANTIAL EVIDENCE THAT THE AGGRIEVED WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

8. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: AUGUST 1, 1969.

I DISSENT.

MY UNDERSTANDING OF THE EVIDENCE, AND TAKING INTO ACCOUNT THE CREDIBILITY OF THE WITNESSES, IN PARTICULAR THE TESTIMONY OF THE SUPERVISOR THOMPSON, I BELIEVE THAT ANTONIO IERACI WAS DEALT WITH CONTRARY TO SECTION 59(A).

I THEREFORE FIND THAT ANTONIO IERACI SHOULD BE RE-INSTATED IN THE SAME OR LIKE EMPLOYMENT, WITH FULL COMPENSATION FOR TIME LOST.

16350-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. MANIS METAL MANUFACTURING LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: LORNE INGLE AND E. BRIGINSHAW FOR THE APPLICANT; RUSSELL KRONICK FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 1, 1969.

1. THE COMPLAINANT FILED TWO COMPLAINTS AGAINST THE RESPONDENT. ONE COMPLAINT, BOARD FILE No. 16174-69-U, HAS REFERENCE TO ALLAN ROSE, ANDRE CADIEUX, RENE CYR, LEN FARHEAD AND ALESSANDRO ANTONACCI. THE OTHER COMPLAINT, BOARD FILE No. 16350-69-U HAS REFERENCE ONLY TO ALLAN ROSE. EACH COMPLAINT IS BROUGHT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT AND EACH ALLEGES THAT THE AFOREMENTIONED AGGRIEVED WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE PARTIES AGREED THAT BOTH CASES BE HEARD TOGETHER.

2. THE AGGRIEVED IN THE COMPLAINT REFERRED TO IN BOARD FILE No. 16174-69-U WERE DISCHARGED BY THE RESPONDENT ON APRIL 29, 1969.

3. THE AGGRIEVED IN THE COMPLAINT REFERRED TO IN BOARD FILE No. 16350-69-U WAS REINSTATED IN EMPLOYMENT ON OR ABOUT JUNE 2, 1969 AND WAS DISCHARGED AGAIN ON JUNE 5, 1969 BECAUSE, THE RESPONDENT STATES, HE REFUSED TO WORK OVERTIME.

4. WE PROPOSE TO DEAL WITH FILE No. 16174-69-U FIRST.

5. THE ALLEGATION OF VIOLATION CONTAINS ALL THE ALTERNATIVES IN SECTION 50(A). THE PARTICULARS, IF THEY MAY BE SO CALLED, SET OUT IN THE COMPLAINT STATED, IN SUMMARY FORM THAT:

ALL AGGRIEVED WERE MEMBERS OF THE UNION AND WERE ACTIVE IN ITS ORGANIZING CAMPAIGN;

ALL AGGRIEVED HAD ENGAGED IN PUBLICIZING A UNION MEETING CALLED FOR TUESDAY, APRIL 29, 1969;

ON APRIL 29TH, PRIOR TO 10.00 A.M., PAUL VICHES AS FOREMAN, OVERHEARD EARL CONNOLLY TELLING AN EMPLOYEE ABOUT THE MEETING.

6. THE EVIDENCE ESTABLISHED THAT A UNION MEETING HAD BEEN CALLED FOR APRIL 29TH, THE SAME DATE UPON WHICH THE DISCHARGES TOOK PLACE.

7. ASSUMING THE FACTS IN THE FIRST TWO ALLEGATIONS TO HAVE BEEN PROVEN, THE TASK WOULD STILL REMAIN TO THE COMPLAINANT TO OFFER EVIDENCE, WHICH MAY BE INFERENTIAL, INDICATING THAT THE RESPONDENT HAD KNOWLEDGE OF THOSE FACTS. THE ALLEGATION WITH RESPECT TO CONNOLLY IS, WE BELIEVE, DIRECTED TOWARDS THAT END. COUNSEL FOR THE RESPONDENT CONDUCTED A VIGOROUS CROSS-EXAMINATION OF ALL WITNESSES IN ORDER, WE ASSUME, TO ESTABLISH, FOR HIS PURPOSES, THAT THEIR ACTIVITIES HAD TAKEN PLACE ON COMPANY TIME AND COMPANY PREMISES. ALL THE WITNESSES WERE INSISTENT THAT THEY HAD BEEN MOST CAREFUL TO KEEP THE ORGANIZATIONAL CAMPAIGN SECRET FROM MANAGEMENT AND HAD NOT, WITH ONE EXCEPTION, DISCUSSED IT DURING WORKING HOURS. EARL CONNOLLY WAS CALLED BY THE COMPLAINANT. HE DENIED THE TRUTH OF THE ALLEGATION THAT HE HAD MADE ANY STATEMENT WITH RESPECT TO THE MEETING WITHIN THE HEARING OF PAUL VICHES. VICHES WAS NOT CALLED BY EITHER PARTY. THUS WHAT WOULD APPEAR TO HAVE BEEN THE MAIN POINT RELIED UPON TO ESTABLISH KNOWLEDGE OF THE MEETING BY THE COMPANY WAS DESTROYED BY THE COMPLAINANT'S OWN WITNESS. IN ADDITION, THE ONLY WITNESS WHO IN ANY REAL WAY SUPPORTED THE ALLEGATION WITH RESPECT TO BEING ENGAGED IN ORGANIZATION ACTIVITY AND PUBLICATION OF THE MEETING WAS ROSE. HE WAS THE ONE WHO CONTACTED THE UNION AND ARRANGED WITH ITS REPRESENTATIVE FOR A MEETING ON APRIL 29TH. HE TOLD ALL THE EMPLOYEES ABOUT THE UNION AND ABOUT THE MEETING. HE STATED HE HAD STARTED TALKING ABOUT THE UNION IN FEBRUARY 1969 AND DISCUSSED IT EVERY DAY WITH EMPLOYEES. SOME OF THESE DISCUSSIONS TOOK PLACE IN THE LUNCH ROOM WHICH WAS ALSO USED BY FOREMEN.

8. INSOFAR AS THE OTHER AGGRIEVED NAMED IN THE FOREGOING COMPLAINT ARE CONCERNED, THERE IS LEFT LITTLE MORE THAN THE FACT

THAT THEY WERE LAID OFF ON THE SAME DATE THAT THE UNION MEETING WAS CALLED. WE FIND THIS SOMEWHAT TENUOUS GROUNDS, STANDING, AS IT DOES, VIRTUALLY ALONE, FOR SUPPORTING AN ALLEGATION OF VIOLATION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

9. THE COMPLAINT IN BOARD FILE NO. 16174-69-U IS, THEREFORE, DISMISSED WITH RESPECT TO CADIEUX, CYR, FARHEAD AND ANTONACCI. THEY ARE NOT CONCERNED WITH THE OTHER FILE.

10. THE SITUATION WITH RESPECT TO THE CASE OF ALLAN ROSE (FILE NO. 16350-69-U) IS DIFFERENT. AS ALREADY NOTED, ROSE WAS REINSTATED FOLLOWING HIS DISCHARGE ON APRIL 29TH. THERE IS NO DOUBT WHATEVER THAT THE RESPONDENT KNEW THAT, AT THE TIME OF HIS REINSTATEMENT, ROSE WAS A MEMBER OF THE UNION, SINCE HE WAS ONE OF THE AGGRIEVED NAMED IN THE OTHER COMPLAINT. THE QUESTION IS, WAS HIS SECOND DISCHARGE TRULY BASED UPON HIS REFUSAL TO WORK OVERTIME, OR WAS IT MOTIVATED BY THE FACT THAT HE WAS ACTIVE IN THE UNION? IT IS TO BE NOTED THAT HIS REINSTATEMENT TOOK PLACE AFTER INVESTIGATION OF THE MATTER BY THE LABOUR RELATIONS BOARD COMMENCED. IT WAS DONE, THE COMPANY SAID, IN ORDER TO HELP THE OFFICER SETTLE THE MATTER.

11. EVERY WITNESS CALLED BY THE UNION CONSISTENTLY STATED THAT DURING THE WHOLE COURSE OF THEIR EMPLOYMENT THEY HAD, ON NUMEROUS OCCASIONS, BEEN ASKED TO WORK OVERTIME AND HAD REFUSED WITH IMPUNITY. IN ADDITION, EACH WITNESS TESTIFIED THAT HE HAD NEVER KNOWN OF ANY EMPLOYEE OF THE COMPANY EVER BEING DISCHARGED OR DISCIPLINED IN ANY WAY BECAUSE OF A REFUSAL TO WORK OVERTIME.

12. THERE IS NOTHING IN THE EVIDENCE OF THE RESPONDENT'S WITNESSES TO COUNTERACT IN ANY WAY THAT OF THE COMPLAINANT'S ON THE QUESTION OF THE CUSTOM PREVAILING WITH RESPECT TO REFUSAL TO WORK OVERTIME. FURTHERMORE, THERE WAS NO SUGGESTION THAT ANY NOTIFICATION TO EMPLOYEES OF A CHANGE IN POLICY WAS ISSUED BY THE RESPONDENT. IN ADDITION, NO WARNING WAS GIVEN ROSE AT THE TIME THAT A REFUSAL WOULD ENTAIL DISCHARGE. ROSE DID SAY THAT BAIRD, THE PRODUCTION MANAGER, ASKED HIM TO RECONSIDER HIS DECISION TO WORK OVERTIME, BUT HE AGAIN, REFUSED. NO ATTEMPT WAS MADE BY THE RESPONDENT TO ENLARGE UPON THIS STATEMENT, NOR WAS IT PURSUED IN CROSS-EXAMINATION. WE DO NOT THINK IT COULD BE CONSTRUED AS A WARNING OF IMPENDING DISCHARGE IN THE CIRCUMSTANCES AND HAVING REGARD TO THE PREVIOUS CONDUCT ON SUCH OCCASIONS.

13. INCIDENTALLY, THERE WAS SOME EVIDENCE THAT THE CUSTOM OF THE RESPONDENT OF PAYING STRAIGHT TIME FOR OVERTIME WAS ONE OF THE REASONS THE EMPLOYEES WERE ORGANIZING AND THAT ONE OF THE AGGRIEVED, AT LEAST, DECLINED TO WORK OVERTIME FOR THAT VERY REASON. OVERTIME, IT WOULD SEEM, WAS A SORE POINT WITH THE EMPLOYEES AND A POINT OF FRICTION.

14. IN VIEW OF THE TOTAL ABSENCE OF EXPLANATION BY THE RESPONDENT FOR ITS SUDDEN CHANGE IN POLICY ON OVERTIME, A MATTER LYING EXCLUSIVELY WITHIN ITS KNOWLEDGE AND BEYOND THE REACH OF THE COMPLAINANT, WE ARE FORCED TO CONCLUDE ROSE'S REFUSAL TO ACCEPT THE WORK WAS SEIZED UPON BY THE RESPONDENT AS A MERE PRE-TEXT FOR DISMISSING HIM FOR WHAT IT HOPED MIGHT APPEAR TO BE JUST CAUSE.

15. HAVING IN MIND THE LEADING PART PLAYED BY ROSE IN THE ORGANIZATION OF THE UNION OVER A CONSIDERABLE TIME IN THE PLANT, WHICH IS A SMALL ONE, WE FIND IT MOST DIFFICULT TO BELIEVE THE RESPONDENT'S TESTIMONY THAT IT WAS UNAWARE OF THE NATURE OF HIS ACTIVITIES. THE REASONS FOR THE ORIGINAL LAY OFF WERE SAID TO INCLUDE THE FACT THAT CERTAIN EMPLOYEES WERE TALKING DURING WORKING HOURS AND MOVING ABOUT THE PLANT THAT "THEY WERE TROUBLE MAKERS"; THAT THE RESPONDENT HAD HAD DIFFICULTIES WITH THEM - THAT "THEY WERE NOT AT THEIR WORK". IN THE ABSENCE OF SPECIFIC EVIDENCE, WE MUST CONCLUDE THAT ROSE WAS CONSIDERED BY THE RESPONDENT TO FALL INTO THIS VAGUE CATEGORY. IT WOULD BE STRETCHING CREDULITY TO ACCEPT THAT THE RESPONDENT ALTHOUGH PURPORTING TO LAY PEOPLE OFF FOR THESE REASONS, MADE NO ATTEMPT TO FIND OUT WHAT WAS CAUSING THIS ACTIVITY AMONG ITS EMPLOYEES. IN ANY EVENT, IT IS QUITE BEYOND DISPUTE, AS ALREADY OBSERVED, THAT AT THE TIME OF HIS SECOND DISCHARGE, THE COMPANY WAS FULLY AWARE OF ROSE'S UNION MEMBERSHIP.

16. IN THE LIGHT OF ALL THE EVIDENCE, INCLUDING THE CREDIBILITY OF WITNESSES, WE CAN ONLY CONCLUDE ON THE BALANCE OF PROBABILITIES THAT THE TRUE REASON FOR THE DISCHARGE OF ROSE ON JUNE 5, 1969, WAS NOT HIS REFUSAL TO WORK OVERTIME, BUT RATHER HIS ACTIVITIES ON BEHALF OF THE UNION. THIS IS CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

17. THE BOARD THEREFORE DETERMINES THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY ALLAN ROSE TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD RECEIVED UP TO AND INCLUDING JUNE 5, 1969.

18. THE BOARD FURTHER DETERMINES THAT THE RESPONDENT PAY TO ALLAN ROSE THE SUM OF \$140.00 FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BETWEEN THE DATE OF DISCHARGE AND THE DATE OF THE HEARING OF THIS MATTER.

19. THE BOARD DIRECTS THAT THE PARTIES MEET WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS OR OTHER BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY BE HEREAFTER SUSTAINED BY ALLAN ROSE BETWEEN JULY 15, 1969 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT

BY THE RESPONDENT WHICH SHALL BE PAID TO HIM. IN DEFAULT OF AGREEMENT BETWEEN THE PARTIES WITHIN 14 DAYS OF THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING TO DETERMINE THE ADDITIONAL AMOUNT, IF ANY, TO BE PAID TO ALLAN ROSE.

16410-69-U: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210 AFFILIATED A.F. OF L, C.I.O. & C.L.C. (COMPLAINANT) V. CANADIANNA NURSING HOME LTD. (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: J.B. WATERMAN AND LEO PARE FOR THE COMPLAINANT, AARON BROWN AND H. BUXBAUM FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 26, 1969.

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2. THIS IS A COMPLAINT FOR RELIEF UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT.

3. THE COMPLAINANT ABANDONED ITS COMPLAINT FOR RELIEF WITH RESPECT TO MRS. L. BELLAMY AT THE HEARING IN THIS MATTER.

4. THE EVIDENCE CALLED BY THE COMPLAINANT ESTABLISHED THAT MRS. S. PINSONNEAULT, MRS. M. RHAN, MRS. J. MARLATT AND MR. F. SPAGNOLA HAD ALL JOINED THE COMPLAINANT UNION WITHIN TWO WEEKS OF THE EVENTS IN QUESTION. ON FRIDAY, JUNE 27TH, 1969, DURING THE COURSE OF A REGULAR BI-WEEKLY STAFF MEETING, THE PRESIDENT OF THE RESPONDENT, MR. BUXBAUM, ADVISED THE EMPLOYEES THAT HE HAD BEEN INFORMED THAT A UNION ORGANIZER HAD CONTACTED SOME OF THE EMPLOYEES. HE THEN ADVISED THE MEETING THAT ALTHOUGH IT WAS NOT IN HIS POWER "TO SAY YES OR NO" WITH RESPECT TO THE EMPLOYEES JOINING THE UNION, HE DID NOT THINK THE UNION WOULD IMPROVE THEIR POSITION WITH THE COMPANY. IN OTHER NURSING HOMES HE OPERATED THERE WAS NO UNION AND HE FELT THAT THERE WAS A BETTER RELATIONSHIP WITH THE COMPANY WITHOUT A UNION. FROM WHAT WAS SAID AT THIS MEETING THERE CAN BE LITTLE DOUBT THAT THE RESPONDENT WAS NOT ANXIOUS TO BARGAIN COLLECTIVELY WITH ITS EMPLOYEES THROUGH A TRADE UNION.

5. THERE WAS NO EVIDENCE, HOWEVER, THAT ANY ATTEMPT WAS MADE BY THE RESPONDENT TO ASCERTAIN THE IDENTITY OF THE UNION MEMBERS OR OF THOSE WHO ACTIVELY SUPPORTED THE UNION. WHILE THE APPLICANT ATTEMPTED TO SHOW THAT MANAGEMENT MAY HAVE OVERHEARD CERTAIN EMPLOYEES

SPEAKING FAVOURABLY OF THE UNION APPROXIMATELY TWO WEEKS PRIOR TO THE EVENTS IN QUESTION, THERE WAS NOTHING IN THE EVIDENCE WHICH ESTABLISHED THAT THE CONVERSATIONS HAD BEEN ACTUALLY OVER-HEARD.

6. TWO OF THE AGGRIEVED PERSONS WERE DISCHARGED ON JUNE 30TH AND TWO OTHERS EMPLOYMENT WAS TERMINATED ON JULY 2ND. DURING THIS SAME WEEK NINE OTHER PERSONS LEFT THEIR EMPLOYMENT AND OF THESE NINE PERSONS AT LEAST TWO WERE DISCHARGED.

7. APPARENTLY, THE RESPONDENT HAD COMMENCED OPERATIONS IN MARCH 1969 AND IN THE INTERVENING FIVE MONTHS THERE HAD BEEN A TURNOVER OF ALMOST ONE HUNDRED PER CENT OF THE STAFF. MR. BUXBAUM TESTIFIED THAT THE TURNOVER IN STAFF WAS A VERY SERIOUS PROBLEM, HOWEVER, HE INDICATED THAT IT WAS NOT UNUSUAL DURING THE FIRST PERIOD OF OPERATION OF A NURSING HOME TO EXPERIENCE A LARGE TURNOVER IN ORDER TO "SHAKE DOWN" THE STAFF AND ESTABLISH A PERMANENT NUCLEUS OF DEDICATED WORKERS.

8. THE RESPONDENT'S WITNESSES TESTIFIED THAT THE REASONS FOR THE DISMISSALS OF THE FOUR AGGRIEVED PERSONS WERE AS FOLLOWS. THE DAY THAT MRS. PINSONNEAULT TERMINATED HER EMPLOYMENT SHE ADVISED THE HEAD NURSE THAT SHE FOUND THERE WAS TOO MUCH WORK AND THAT SHE INTENDED TO QUIT AND THE HEAD NURSE INFORMED MR. BUXBAUM OF HER CONVERSATION WITH MRS. PINSONNEAULT. MR. BUXBAUM TELEPHONED MRS. PINSONNEAULT AT HER HOME AND ADVISED HER THAT THE RESPONDENT ACCEPTED HER RESIGNATION.

9. MRS. M. RHAN WAS DISCHARGED BECAUSE SHE WAS LAGGING ON NURSING CARE AND THE DAY IMMEDIATELY PRECEDING HER LAY-OFF MRS. RHAN HAD NEGLECTED A WOMAN PATIENT IN A SERIOUS MANNER. WHEN THIS LAST EVENT CAME TO THE ATTENTION OF THE HEAD NURSE MRS. RHAN WAS SUMMONED TO THE OFFICE. AFTER BRINGING THE SPECIFIC COMPLAINTS TO THE ATTENTION OF MRS. RHAN, MRS. RHAN WAS DISCHARGED. APPARENTLY, MRS. RHAN DID NOT CHALLENGE THE ALLEGATION THAT THE QUALITY OF HER WORK HAD FALLEN OFF.

10. MRS. MARLATT WAS DISCHARGED ON THE GROUNDS THAT SHE HAD BEEN HEARD COMPLAINING TO OTHER STAFF IN THE PRESENCE OF PATIENTS THAT THE "PLACE WAS GETTING WORSE AND WORSE EVERYDAY". APPARENTLY, MRS. MARLATT MADE THIS STATEMENT BECAUSE SHE BELIEVED THAT THE NURSING HOME WAS UNDERSTAFFED. AFTER DISCUSSING MRS. MARLATT'S COMPLAINTS WITH HER FOR A PERIOD OF APPROXIMATELY ONE HOUR THE RESPONDENT'S OFFICIALS RESERVED THEIR DECISION WITH RESPECT TO MRS. MARLATT AND SUBSEQUENTLY ADVISED HER THAT HER SERVICES WERE NO LONGER REQUIRED. IT WAS THE RESPONDENT'S POSITION THAT THE COMPLAINING DONE BY MRS. MARLATT WAS BAD NOT ONLY FOR THE MORALE OF THE STAFF BUT FOR THE PATIENTS OF THE NURSING HOME.

11. MR. SPAGNOLA WAS DISCHARGED BECAUSE OF SERIOUS FRICTION WHICH EXISTED BETWEEN HIM AND THE SENIOR COOK. IN ADDITION, MR. SPAGNOLA HAD ADVISED THE RESPONDENT THAT HE DID NOT INTEND TO REMAIN WITH THE RESPONDENT DURING THE COURSE OF THE COMING WINTER SINCE HE INTENDED TO RETURN TO A JOB WHICH HE HAD HELD FOR THE PAST THIRTEEN YEARS. APPARENTLY, MR. SPAGNOLA HAD ALSO INDICATED THAT HE INTENDED TO QUIT HIS EMPLOYMENT AS SOON AS HE COULD LOCATE A BETTER JOB. MR. SPAGNOLA WAS THEREFORE DISCHARGED BECAUSE OF THESE CIRCUMSTANCES.

12. THE ONUS OF ESTABLISHING THAT THE AGGRIEVED PERSONS WERE DEALT WITH CONTRARY TO THE PROVISIONS OF SECTIONS 48 AND 50 OF THE LABOUR RELATIONS ACT, AS ALLEGED, RESTS UPON THE COMPLAINANT. WHILE THE EVIDENCE DID RAISE A SUSPICION WHICH CAST AN ONUS OF EXPLANATION ON THE RESPONDENT, THE RESPONDENT CALLED EVIDENCE TO SATISFY THIS ONUS. IT IS TO BE NOTED THAT THE REASONS GIVEN BY THE RESPONDENT AT THE HEARING IN THIS MATTER FOR TERMINATING THE EMPLOYMENT OF THE AGGRIEVED PERSONS WERE THE SAME REASONS GIVEN TO THE EMPLOYEES AT THE TIME OF THEIR DISCHARGE. WHILE THE BOARD MIGHT NOT HAVE ACTED IN THE SAME MANNER AS THE RESPONDENT, THE BOARD CANNOT FIND THAT THE REASONS GIVEN BY THE RESPONDENT WERE SO UNREASONABLE OR INCONSISTENT WITH THE FACTS AS TO PREVENT THE BOARD FROM ACCEPTING THE REASONS GIVEN AS BEING THE TRUE REASONS FOR THE ACTION TAKEN. IN THE ABSENCE OF EVIDENCE WHICH WOULD ESTABLISH THAT THE AGGRIEVED PERSONS WERE DISCHARGED CONTRARY TO THE ACT, WE MUST ACCEPT THE REASONS GIVEN BY THE RESPONDENT IN THE CIRCUMSTANCES OF THIS CASE.

13. WHILE THE BOARD MAY NOT BE ENTIRELY SATISFIED WITH THE ACTION TAKEN BY THE RESPONDENT ON ALL THE EVIDENCE, IN ORDER TO ARRIVE AT ANY OTHER RESULT THE BOARD WOULD HAVE TO ASSUME THAT THE COMPANY INTENDED TO DISCHARGE ALL PERSONS WHO SUPPORTED THE UNION. ALTHOUGH IN OUR EXPERIENCE SUCH A COURSE OF ACTION HAS BEEN TAKEN BY EMPLOYERS IN OTHER CASES, THERE MUST BE SUFFICIENT EVIDENCE TO LEAD THE BOARD TO SUCH A CONCLUSION. IN ORDER TO ENABLE THE BOARD TO DRAW THE INFERENCE WHICH THE COMPLAINANT HAS SUGGESTED IN THIS CASE, THE COMPLAINANT MUST SATISFY THE ONUS OF ESTABLISHING BY EVIDENCE THAT THE RESPONDENT WAS NOT MOTIVATED BY THE REASONS GIVEN BUT WAS MOTIVATED BY THE DESIRE TO PREVENT THE UNION FROM BECOMING THE BARGAINING AGENT FOR ITS EMPLOYEES. WHILE ONE MAY SPECULATE ON WHETHER THE REASONS GIVEN WERE THE TRUE REASONS, THERE IS NO REAL EVIDENCE WHICH WOULD SUPPORT THE CONCLUSION THAT THE AGGRIEVED PERSONS WERE FIRED FOR UNION ACTIVITY AND IT WOULD BE HIGHLY IMPROPER FOR THE BOARD TO MAKE SUCH AN ASSUMPTION MERELY ON SUSPICION.

14. WE THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON IT AND THE COMPLAINT IS THEREFORE DISMISSED.

16443-69-U: J.P. SULLIVAN (COMPLAINANT) V. DUPATE CANADA LTD.
(RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: AUGUST 21, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 48 AND 50 OF THE ACT.

2. THE COMPLAINANT HAD BEEN EMPLOYED BY THE RESPONDENT AS A SECURITY GUARD SINCE 1949. IT APPEARS FROM THE REPORT FILED BY THE FIELD OFFICER THAT THE COMPLAINANT'S EMPLOYMENT WITH THE RESPONDENT WAS TERMINATED ON JANUARY 1ST, 1969, THE COMPLAINANT (WHO IS ALSO THE GRIEVOR) HAVING REACHED THE AGE OF 65. THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE UNITED PLANT GUARDS W.A. LOCAL 1958, WHICH IS THE BARGAINING AGENT FOR THE COMPLAINANT, PROVIDES FOR THE AUTOMATIC RETIREMENT OF EMPLOYEES AT AGE 65 BUT THAT AN EMPLOYEE, WITH THE APPROVAL AND AT THE OPTION OF THE COMPANY, MAY REMAIN EMPLOYED AFTER THAT AGE. THE COMPLAINANT HAS REFUSED TO SIGN HIS RETIREMENT PAPERS WHICH WOULD ENTITLE HIM TO PENSION BENEFITS ALLEGING THAT THE RESPONDENT, IN FACT, WAS DISCHARGING HIM BECAUSE HE WAS "OVERZEALOUS" IN THE PERFORMANCE OF HIS DUTIES OVER HIS TWENTY YEARS OF SERVICE WITH THE RESPONDENT AND BECAUSE OF HIS ACTIVITIES ON BEHALF OF THE UNION. ACCORDING TO THE COMPLAINANT, HE WAS ON THE UNION COMMITTEE THAT NEGOTIATED A COLLECTIVE AGREEMENT WITH THE RESPONDENT IN 1966. SUBSEQUENT TO THE TERMINATION OF HIS EMPLOYMENT BY THE RESPONDENT THE COMPLAINANT FILED A GRIEVANCE ALLEGING THAT THE RESPONDENT ACTED IN A DISCRIMINATORY MANNER IN RETIRING HIM ON JANUARY 1ST, 1969. THE UNION REFUSED TO PROCESS HIS GRIEVANCE.

3. IN A COMPLAINT UNDER SECTION 65 IT MUST BE SHOWN THAT THE AGGRIEVED PERSON HAS BEEN DEALT WITH CONTRARY TO THE ACT. THE COMPLAINANT ALLEGED IN HIS COMPLAINT THAT HE WAS DEALT WITH CONTRARY TO SECTIONS 48 AND 50 OF THE ACT. THE ALLEGATIONS OF FACT SET OUT IN THE COMPLAINT AND IN THE COMPLAINANT'S STATEMENT TO THE FIELD OFFICER DO NOT ESTABLISH A PRIMA FACIE CASE THAT THE COMPLAINANT HAS BEEN DEALT WITH CONTRARY TO THE ABOVE SECTIONS OF THE ACT. IN ANY EVENT, THE BOARD HAS CONSISTENTLY TAKEN THE POSITION THAT WHERE A REMEDY IS AVAILABLE TO AN AGGRIEVED PERSON BY WAY OF A GRIEVANCE AND ARBITRATION PROCEDURE UNDER A COLLECTIVE AGREEMENT THIS BOARD OUGHT NOT TO ENTERTAIN A COMPLAINT UNDER SECTION 65 UNLESS THERE ARE EXCEPTIONAL CIRCUM-

STANCES. IN THE HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. 1123, THE BOARD QUOTED FROM AN EARLIER DECISION, DOMINION STORES LIMITED (BOARD FILE NO. 2858-61-U) AS FOLLOWS:

IN THE NATIONAL SHOWCASE COMPANY CASE, (1960) CCH CANADIAN LABOUR LAW REPORTS, 16,185, C.L.S. 76-715, THE BOARD HELD THAT WHERE A COMPLAINT RAISES THE ISSUE THAT A PERSON HAS BEEN DISCHARGED CONTRARY TO THE PROVISIONS OF A COLLECTIVE AGREEMENT, THE MATTER IS ONE TO BE DEALT WITH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND NOT BY MEANS OF A HEARING BY THE BOARD UNDER SECTION 65 OF THE ACT. THE COMPLAINANT IN THIS CASE APPEARS TO BE DISSATISFIED WITH THE DISPOSITION OF HIS CASE BY THE TRADE UNION WHICH WAS HIS BARGAINING AGENT. AS THE BOARD HELD IN THE WALLACE BARNES COMPANY CASE, (1961) CCH CANADIAN LABOUR LAW REPORTS, 16,198, C.L.S. 76-742, WHERE EMPLOYEES HAVE CHOSEN A BARGAINING AGENT TO ACT ON THEIR BEHALF, THEY ARE BOUND BY ITS ACTIONS AND, IF A COLLECTIVE AGREEMENT EXISTS, BY THE TERMS OF THAT AGREEMENT. AN EMPLOYEE IN THESE CIRCUMSTANCES MUST SEEK RELIEF UNDER THE AGREEMENT AND NOT BY AN APPLICATION TO THIS BOARD.

4. THE BOARD FINDS NO EXCEPTIONAL CIRCUMSTANCES ALLEGED IN THE PRESENT COMPLAINT WHICH WOULD CAUSE IT TO DEPART FROM ITS GENERAL POLICY. ACCORDINGLY, WE ARE OF THE OPINION THAT WE OUGHT NOT TO INQUIRE FURTHER INTO THIS COMPLAINT.

5. THE COMPLAINT ACCORDINGLY IS DISMISSED.

16547-69-U: ANDRE V. LAUZON (COMPLAINANT) V. CONSOLIDATED TRUCK LINES LIMITED (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

DECISION OF THE BOARD: AUGUST 11, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 37 OF THE LABOUR RELATIONS ACT.

2. BRIEFLY, THE ESSENTIAL MATERIAL FACTS UPON WHICH THE COMPLAINANT RELIES ARE AS FOLLOWS. THE COMPLAINANT WAS DISCHARGED BY THE MANAGER OF THE RESPONDENT COMPANY ON JANUARY 27TH, 1969, "FOR ILLEGAL USE OF A COMPANY VEHICLE". ON MARCH 14TH, 1969, THE COMPLAINANT FILED A GRIEVANCE RELATING TO HIS DISCHARGE PURSUANT TO A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE TRADE UNION WHICH HOLDS THE BARGAINING RIGHTS FOR THE COMPLAINANT. IN DUE COURSE, A JOINT GRIEVANCE COMMITTEE UNANIMOUSLY REJECTED THE GRIEVANCE DUE TO THE FACT THAT IT WAS NOT PROPERLY BEFORE THE COMMITTEE BECAUSE OF ARTICLE 7.4 OF THE COLLECTIVE AGREEMENT WHICH REQUIRES THIS TYPE OF GRIEVANCE TO BE REGISTERED IN WRITING WITHIN 72 HOURS OF THE DISCHARGE. IN HIS COMPLAINT, THE COMPLAINANT OUTLINES THE ALLEGED CIRCUMSTANCES LEADING UP TO HIS DISCHARGE AND THE ALLEGED EXTENUATING CIRCUMSTANCES WHICH CAUSED HIS DELAY IN FILING A GRIEVANCE PROTESTING HIS DISCHARGE. THE COMPLAINANT SUBMITS THAT THE REFUSAL OF THE JOINT GRIEVANCE COMMITTEE TO FURTHER PROCESS HIS GRIEVANCE WAS A VIOLATION OF THE COLLECTIVE AGREEMENT.

3. IN A COMPLAINT UNDER SECTION 65, IT MUST BE SHOWN THAT THE COMPLAINANT OR THE AGGRIEVED PERSON OR PERSONS HAVE BEEN DEALT WITH CONTRARY TO THE ACT. SECTION 37, WHICH THE COMPLAINANT ALLEGES HAS BEEN VIOLATED BY THE RESPONDENT, READS:

A COLLECTIVE AGREEMENT IS, SUBJECT TO AND FOR THE PURPOSES OF THIS ACT, BINDING UPON THE EMPLOYER AND UPON THE TRADE UNION THAT IS A PARTY TO THE AGREEMENT WHETHER OR NOT THE TRADE UNION IS CERTIFIED AND UPON THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE AGREEMENT.

4. WITH RESPECT TO THE ALLEGED BREACH OF A TERM OF A COLLECTIVE AGREEMENT, IN THE HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. 1123, THE BOARD STATED:

FAILURE TO OBSERVE THE TERM OF A COLLECTIVE AGREEMENT, STANDING BY ITSELF, IS NOT A CONTRAVENTION OF ANY PROVISION OF THE ACT. IN SO FAR AS THE COMPLAINANTS HERE REST THEIR CASE ON THE ALLEGED VIOLATION OF THE TERMS OF THE COLLECTIVE AGREEMENT, THEY HAVE THEREFORE FAILED TO ESTABLISH THAT THEY HAVE BEEN DEALT WITH CONTRARY TO THE ACT. INDEED, THE ACT EXPRESSLY PROVIDES IN SECTION 34 THAT THE REMEDY FOR FAILURE TO OBSERVE THE PROVISIONS OF A COLLECTIVE AGREEMENT IS THROUGH THE PROCESSING OF A GRIEVANCE, IN RESPECT OF SUCH FAILURE, TO ARBITRATION.

5. IN THE HEIST CASE, INDIVIDUAL EMPLOYEES COMPLAINED, PURSUANT TO SECTION 65 OF THE ACT, THAT THEIR EMPLOYER HAD FAILED TO ABIDE BY THE TERMS OF A COLLECTIVE AGREEMENT. IN THE RESULT, THE BOARD DISMISSED THE COMPLAINT. IN THE LATER NORMAN BEANLAND CASE, OLRB M.R. OCT. 1966 513, THE BOARD CITED WITH APPROVAL BOTH THE HEIST CASE AND OTHER DECISIONS IN WHICH THE BOARD HAS HELD THAT WHERE AN ALTERNATIVE REMEDY EXISTS, AND MORE PARTICULARLY A GRIEVANCE PROCEDURE UPON WHICH THE PARTIES HAVE AGREED, THE BOARD, IN THE EXERCISE OF ITS DISCRETION, OUGHT NOT TO PROCEED WITH A COMPLAINT MADE UNDER SECTION 65 (SEE NATIONAL SHOWCASE Co. LTD. CASE, 61 C.L.L.C. 901; PITT STREET HOTEL LTD. CASE, 63 C.L.L.C. 1149; WALLACE BARNES COMPANY LTD. CASE, 61 C.L.L.C. 928).

6. THE BOARD, NEVERTHELESS, HAS RECOGNIZED THAT THERE MAY BE EXCEPTIONAL CIRCUMSTANCES WHICH WOULD CAUSE IT TO DEPART FROM THE GENERAL PRINCIPLE ENUNCIATED ABOVE. THE BEANLAND CASE WAS ONE OF THOSE EXCEPTIONS. IN THAT CASE, THE COMPLAINANT, AS HERE, WAS THE AGGRIEVED PERSON. HIS COMPLAINT WAS THAT HIS BARGAINING AGENT AND THE BUSINESS MANAGER OF THE UNION HAD PROCURED HIS DISCHARGE FROM HIS EMPLOYMENT IN VIOLATION OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE EMPLOYER AND THE TRADE UNION. AS IN THIS CASE, THE COMPLAINANT ALLEGED A VIOLATION OF SECTION 37 OF THE ACT. THE BOARD STATED AS FOLLOWS AT 516:

IN THE INSTANT CASE, THERE IS A COLLECTIVE AGREEMENT IN EFFECT, AND IT WOULD APPEAR THAT AN ALTERNATE REMEDY EXISTS UNDER THE GRIEVANCE AND ARBITRATION PROVISIONS OF THAT AGREEMENT. IT IS NOT ALLEGED THAT THERE HAS BEEN COLLUSION BETWEEN THE EMPLOYER, WHO IS NOT A PARTY TO THIS PROCEEDING, AND THE TRADE UNION. THE ALLEGATION IS RATHER THAT THE UNION ITSELF WRONGLY PROCURED THE DISCHARGE OF THE COMPLAINANT. WHERE THE TRADE UNION HAS ITSELF PROCURED THE DISCHARGE OF AN EMPLOYEE, IT WOULD BE UNREASONABLE (TO SAY THE LEAST) TO EXPECT IT THEN TO CARRY THAT CASE THROUGH THE ARBITRATION PROCESS ON THE EMPLOYEE'S BEHALF. FURTHER, IN THESE CIRCUMSTANCES, IT WOULD BE UNFAIR TO REGARD THE EMPLOYER AS ALONE LIABLE TO THE EMPLOYEE FOR HIS WRONGFUL DISCHARGE. IN ANY EVENT, IT WAS CONCEDED BY THE REPRESENTATIVE OF THE RESPONDENTS THAT THE COMPLAINANT HAD NO EFFECTIVE RECOURSE, APART FROM THAT NOW SOUGHT, FOR THE WRONG DONE HIM.

7. THE SITUATION IN THE PRESENT COMPLAINT IS QUITE DIFFERENT FROM THAT IN THE BEANLAND CASE. HERE THE UNION HOLDING THE BARGAINING RIGHTS FOR THE COMPLAINANT IS NOT ALLEGED TO BE IN ANY WAY RESPONSIBLE FOR HIS DISCHARGE. FURTHER, THERE IS NO SUGGESTION THAT THE DECISION OF THE JOINT GRIEVANCE COMMITTEE NOT TO PROCESS THE GRIEVANCE FURTHER WAS AN ACT OF COLLUSION BY THE COMPANY AND THE UNION AGAINST THE COMPLAINANT. INDEED, THE BARGAINING AGENT HAS NOT BEEN NAMED AS A RESPONDENT OR EVEN IDENTIFIED.
8. IN THE HEIST CASE, THE BOARD QUOTED FROM AN EARLIER DECISION, DOMINION STORES LIMITED (BOARD FILE NO. 2858-61-U) AS FOLLOWS:
- IN THE NATIONAL SHOWCASE COMPANY CASE, (1960) CCH CANADIAN LABOUR LAW REPORTS, 16,185, C.L.S. 76-715, THE BOARD HELD THAT WHERE A COMPLAINT RAISES THE ISSUE THAT A PERSON HAD BEEN DISCHARGED CONTRARY TO THE PROVISIONS OF A COLLECTIVE AGREEMENT, THE MATTER IS ONE TO BE DEALT WITH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND NOT BY MEANS OF A HEARING BY THE BOARD UNDER SECTION 65 OF THE ACT. THE COMPLAINANT IN THIS CASE APPEARS TO BE DISSATISFIED WITH THE DISPOSITION OF HIS CASE BY THE TRADE UNION WHICH WAS HIS BARGAINING AGENT. AS THE BOARD HELD IN THE WALLACE BARNES COMPANY CASE, (1961) CCH CANADIAN LABOUR LAW REPORTS, 16,198, C.L.S. 76-742, WHERE EMPLOYEES HAVE CHOSEN A BARGAINING AGENT TO ACT ON THEIR BEHALF, THEY ARE BOUND BY ITS ACTIONS AND, IF A COLLECTIVE AGREEMENT EXISTS, BY THE TERMS OF THAT AGREEMENT. AN EMPLOYEE IN THESE CIRCUMSTANCES MUST SEEK RELIEF UNDER THE AGREEMENT AND NOT BY AN APPLICATION TO THIS BOARD.
9. THE BOARD FINDS THAT THERE ARE NO EXCEPTIONAL CIRCUMSTANCES ALLEGED IN THE PRESENT COMPLAINT WHICH WOULD BRING IT UNDER ANY OF THE EXCEPTIONS TO THE GENERAL RULE WHICH HAVE BEEN ESTABLISHED BY THE BOARD.
10. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE BOARD IS OF THE OPINION THAT IT OUGHT NOT TO INQUIRE FURTHER INTO THIS COMPLAINT.
11. PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT ACCORDINGLY IS DISMISSED.

INDEXED ENDORSEMENT - SECTION 47A

16268-69-M: RETAIL CLERKS UNION LOCALS No. 206 AND 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANTS) V. SUPER CITY DISCOUNT FOODS LIMITED; LOBLAW GROCETERIAS CO. LIMITED; UNION OF CANADIAN RETAIL EMPLOYEES; (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: IAN SCOTT AND THOMAS L. REES FOR THE APPLICANT; MARTIN LEVINSON AND RENE LECUYER FOR THE RESPONDENT, UNION OF CANADIAN RETAIL EMPLOYEES; G. H. METCALFE, W. G. GRAY AND F. D. KEAN FOR THE RESPONDENTS, SUPER CITY AND LOBLAWS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F. IRWIN:
AUGUST 1, 1969.

. . .

2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

3. THE APPLICANT UNION HAS TWO COLLECTIVE AGREEMENTS WITH SUPER CITY DISCOUNT FOODS LIMITED (HEREINAFTER CALLED "SUPER CITY"), ONE COVERING ALL FULL-TIME AND THE OTHER ALL PART-TIME EMPLOYEES OF THE COMPANY, WITH CERTAIN EXCEPTIONS, IN THE PROVINCE OF ONTARIO EXCEPT FOR CERTAIN DESIGNATED AREAS.

4. THE RESPONDENT UNION OF CANADIAN RETAIL EMPLOYEES HAS A COLLECTIVE AGREEMENT WITH LOBLAW GROCETERIAS CO. LIMITED (HEREINAFTER CALLED "LOBLAWS") COVERING FULL-TIME AND, IN APPENDIX A OF THE AGREEMENT, PART-TIME EMPLOYEES OF THE COMPANY, WITH CERTAIN EXCEPTIONS, IN ANY OF ITS STORES IN ONTARIO EXCLUDING CERTAIN DESIGNATED AREAS.

5. THE APPLICATION HAS REFERENCE TO TWO STORES HEREIN REFERRED TO AS THE CYRVILLE ROAD STORE AND THE BASELINE STORE, EACH OF WHICH FALLS WITHIN THE GEOGRAPHIC REACH OF EACH OF THE ABOVE COLLECTIVE AGREEMENTS.

6. IMMEDIATELY PRIOR TO JUNE 9TH, 1969, BOTH OF THE ABOVE NAMED STORES WERE OPERATED BY SUPER CITY. ON THAT DATE, BOTH STORES CLOSED DOWN OPERATIONS. ON JUNE 11TH, 1969, BOTH STORES RE-OPENED AS LOBLAWS STORES.

7. ABOUT A WEEK PRIOR TO JUNE 9TH, 1969, THE FOLLOWING LETTER WAS SENT BY A.R. WALLACE, VICE-PRESIDENT AND DIRECTOR OF MARKET OPERATIONS, TO ALL EMPLOYEES OF SUPER CITY:

"WE WISH YOU TO BE ADVISED THAT AFTER SUPER CITY CLOSES ITS OPERATION ON OR ABOUT JUNE 14TH, 1969, AS QUICKLY AS POSSIBLE THEREAFTER THE STORE WILL BE OPENED AND OPERATED BY LOBLAW GROCETERIAS CO. LIMITED. WE ALSO WISH ALL TO BE OFFICIALLY ADVISED CONCERNING FUTURE EMPLOYMENT.

WE ARE PLEASED TO ADVISE THAT WE ARE IN A POSITION TO OFFER YOU, A FULL-TIME EMPLOYEE, EMPLOYMENT WITH LOBLAWS. EVERY EFFORT WILL BE MADE TO PLACE YOU IN A POSITION COMPARABLE TO THAT WHICH YOU PRESENTLY OCCUPY."

8. ON MAY 7TH, 1969, SUPER CITY ADDRESSED THE FOLLOWING LETTER TO MR. T.L. REES, INTERNATIONAL REPRESENTATIVE OF RETAIL CLERKS' INTERNATIONAL ASSOCIATION, LOCAL 486:

"DEAR SIR:

THE COMPANY WILL CEASE OPERATIONS AT GEM OTTAWA AND CYRVILLE ON OR ABOUT JUNE 14TH, 1969."

9. ON THE SAME DATE, MAY 7TH, 1969, LOBLAW GROCETERIAS CO. LIMITED SENT A LETTER TO MR. A. HART, PRESIDENT, UNION OF CANADIAN RETAIL EMPLOYEES READING AS FOLLOWS:

"DEAR SIR:

THE COMPANY WILL COMMENCE OPERATIONS AT 1350 BASELINE ROAD, OTTAWA AND CYRVILLE ON OR ABOUT JUNE 18TH OR 19TH, 1969."

10. BOTH OF THE FOREGOING LETTERS ARE SIGNED BY G.H. METCALFE, MANAGER, PERSONNEL AND LABOUR RELATIONS FOR EACH COMPANY.

11. IN A LETTER DATED JUNE 17TH, 1969 TO MR. REES, LOBLAW GROCETERIAS CO. LIMITED, OVER THE SIGNATURE OF G. H METCALFE, ACKNOWLEDGED RECEIPT OF A LETTER FROM HIM DATED 9TH JUNE, 1969 IN WHICH, APPARENTLY, REES GAVE NOTICE OF DESIRE TO BARGAIN. THE LABLAWS' LETTER QUOTES SECTION 47A(8) OF THE LABOUR RELATIONS ACT AND SUGGESTS THAT IT WOULD SEEM, SINCE REES HAD APPLIED TO THE LABOUR RELATIONS BOARD, THE SUBJECT MATTER OF HIS LETTER COULD NOT BE DEALT WITH UNTIL AFTER THE BOARD DISPOSED OF THE APPLICATION.

12. THE BOARD WAS ADVISED BY COUNSEL FOR THE CORPORATE RESPONDENTS THAT THERE WAS NO WRITTEN AGREEMENT WITH RESPECT TO THE TWO STORE CLOSINGS AND THE TWO STORE OPENINGS AND THAT THERE WAS NO FINANCIAL TRANSACTION CONNECTED THEREWITH BETWEEN THE TWO COMPANIES DIRECTLY. COUNSEL REAFFIRMED THE STATEMENTS SET OUT IN

THE CORPORATE RESPONDENTS' REPLIES WITH RESPECT TO CERTAIN OWNERSHIP AND TENANCY MATTERS INVOLVED IN THE SITUATION. HE STATED THAT THE CYRVILLE ROAD STORE WAS OWNED BY REX REALTY LIMITED. SUPER CITY HAD BEEN THE TENANT OF THAT STORE AND LOBLAWS HAD BEEN THE GUARANTOR OF THE LEASE. THE TENANT AND OCCUPIER IS NOW LOBLAWS AND ARRANGEMENTS HAD BEEN MADE TO ASSIGN THE LEASE TO LOBLAWS. HE HAD NO INFORMATION AS TO WHETHER ANY CONSIDERATION HAD PASSED WITH RESPECT TO THE ASSIGNMENT.

13. INsofar AS THE BASELINE STORE IS CONCERNED, COUNSEL ADVISED THAT IT STOOD ON PROPERTY ONCE OWNED BY LOBLAWS WHO OPERATED A FOOD STORE ON THE PREMISES. IN 1962, THE STORE WAS OPERATED BY SUPER CITY. IN 1967, LOBLAWS CONVEYED THE PROPERTY TO ANOTHER COMPANY (SPEEN INVESTMENTS LIMITED, ACCORDING TO THE REPLY) AND LEASED BACK THE STORE. SUPER CITY CONTINUED TO BE THE OCCUPIER OF THE RETAIL STORE PREMISES. WHEN THE STORE RE-OPENED, LOBLAWS BECAME BOTH OCCUPIER AND TENANT OF THE STORE OF WHICH HAD BEEN TENANT SINCE 1967.

14. A CONSIDERABLE NUMBER OF FORMER EMPLOYEES OF SUPER CITY WERE EMPLOYED BY LOBLAWS AT THE TWO STORES WHEN THEY RE-OPENED. THERE IS ALSO EVIDENCE THAT SOME EMPLOYEES OF LOBLAWS FROM THE AREA WERE EMPLOYED AS FULL TIME EMPLOYEES IN THE CYRVILLE AND BASELINE STORES. THERE WAS THUS AN INTERMINGLING OF EMPLOYEES AMONG THOSE EMPLOYED ON A FULL TIME BASIS.

15. MR. REES HAD A CONFERENCE WITH MESSRS. WALLACE, G.H. METCALFE, DAVIDSON AND SCOTT AROUND THE END OF MAY. IT WAS NOT MADE CLEAR AS TO WHAT FUNCTION, IF ANY, DAVIDSON AND SCOTT HAD WITH EITHER CORPORATE RESPONDENT. IT APPEARS FROM MR. REES'S EVIDENCE THAT HE LEARNED LITTLE FROM THE MEETING, EXCEPT THAT SUPER CITY WAS GOING OUT OF BUSINESS AND THAT LOBLAWS WAS GOING INTO BUSINESS AT THE STORES IN QUESTION.

16. AS THE BOARD STATED IN THE SUPER CITY LIMITED CASES, OLRB MONTHLY REPORT MAY 1969, P. 93, THE ONUS RESTS ON THE APPLICANT TO PRODUCE BEFORE THE BOARD THE ESSENTIAL EVIDENCE UPON WHICH IT SEEKS TO BASE ITS CLAIM FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. IN THE PRESENT INSTANCE, THE BOARD FINDS THAT THE ESSENTIAL EVIDENCE WAS NOT ADDUCED. IT IS TRUE THAT CERTAIN FACTS WERE PRESENTED, BUT THESE DO LITTLE MORE THAN PROVIDE GROUNDS FOR VARIED SPECULATION AS TO THE REAL NATURE OF WHAT TOOK PLACE WITH RESPECT TO THE TWO STORES INVOLVED. THERE ARE INDICATIONS THAT THE RESPONDENT COMPANIES MAY HAVE BEEN PAWNS IN SOME KIND OF CORPORATE CHESS GAME, BUT THERE IS NO EVIDENCE AS TO WHO THE MOVER OR MOVERS MIGHT BE. IT IS NOT, AS

THE ABOVE CITED CASE IMPLIES, FOR THE BOARD TO UNDERTAKE AN INQUIRY OF ITS OWN INTO THE MATTER. IT RELIES UPON THE EVIDENCE PRESENTED TO IT AT THE HEARING. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: AUGUST 1, 1969.

I DISSENT. IN THE CIRCUMSTANCES OF THIS CASE, I WOULD HAVE ORDERED A VOTE.

INDEXED ENDORSEMENTS - SECTION 79(2)

13761-67-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 (APPLICANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: DAVID LEWIS, Q.C., ROBT. RICHARDSON AND MRS. J. SEAGER FOR THE APPLICANT, F.G. HAMILTON, G. MCHENRY, H.L. GRIFFIN AND T. ABBOTT FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 27, 1969.

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT, FOR A DETERMINATION AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

2. ON OCTOBER 31ST, 1967, THE BOARD AUTHORIZED MR. S.G. GRIZZLE, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE 69 PERSONS WHOSE DUTIES AND RESPONSIBILITIES WERE IN DISPUTE. THE EXAMINER CONVENED 73 MEETINGS OF THE REPRESENTATIVES OF THE PARTIES COMMENCING ON NOVEMBER 20TH, 1967. THE LAST MEETING WAS HELD ON DECEMBER 19TH, 1968. THE EXAMINER'S REPORT IN THIS MATTER COMPRISED 722 PAGES TO WHICH WERE ANNEXED SOME 90 EXHIBITS AND CERTAIN SCHEDULES.

3. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MAY 30TH, 1969, AS AMENDED BY HIS SUPPLEMENTARY REPORT DATED JULY 11TH, 1969, A HEARING WAS HELD BY THE BOARD ON JULY 30TH, 1969 TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EFFECT TO BE GIVEN TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.

4. AT THE HEARING, BOTH PARTIES REQUESTED THE BOARD TO PUBLICLY NOTE THEIR APPRECIATION OF THE EXAMINER'S PATIENCE AND ENDURANCE AND THE FINE MANNER IN WHICH THE REPORT WAS PREPARED IN THIS MOST DIFFICULT MATTER.

5. THE PARTIES REFERRED THE BOARD TO THE CRITERIA FOR DETERMINING WHETHER A PERSON IS AN EMPLOYEE WHICH WAS ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L. R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379. IN THAT CASE, THE BOARD STATED AS FOLLOWS:

MOST OF THE PERSONS IN DISPUTE HAVE MORE THAN ONE FUNCTION AND GENERALLY SPEAKING IT IS THE WEIGHT OR EMPHASIS ATTACHED TO THE DIFFERENT FUNCTIONS WHICH MUST DETERMINE ON WHICH SIDE OF THE MANAGERIAL LINE THAT THE PERSONS FALL. SENIOR OR SKILLED EMPLOYEES OFTEN HAVE MORE RESPONSIBILITIES THAN OTHER RANK AND FILE EMPLOYEES AND THEY EXERCISE CERTAIN CONTROL AND DIRECTION OVER THE OTHER EMPLOYEES BECAUSE OF THEIR GREATER EXPERIENCE AND SKILL. IT IS THE BOARD'S DIFFICULT TASK TO DETERMINE WHETHER THE ADDITIONAL RESPONSIBILITIES ARE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT OR ARE MERELY INCIDENTAL TO THE PRIME PURPOSE FOR WHICH THE EMPLOYEE IS ENGAGED (I.E. TO PERFORM WORK PROPERLY PERFORMED BY PERSONS WITHIN THE BARGAINING UNIT). IF THE MAJORITY OF A PERSON'S TIME IS OCCUPIED BY WORK SIMILAR TO THAT PERFORMED BY EMPLOYEES WITHIN THE BARGAINING UNIT AND SUCH PERSON HAS NO EFFECTIVE CONTROL OR AUTHORITY OVER THE EMPLOYEES IN THE BARGAINING UNIT BUT IS MERELY A CONDUIT CARRYING ORDERS OR INSTRUCTIONS FROM MANAGEMENT TO THE EMPLOYEES, THE PERSON CANNOT BE SAID TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. ON THE OTHER HAND, IF A PERSON IS PRIMARILY ENGAGED IN SUPERVISION AND DIRECTION OF OTHER EMPLOYEES AND HAS EFFECTIVE CONTROL OVER THEIR EMPLOYMENT RELATIONSHIP, EVEN THOUGH THE PERSON OCCASIONALLY PERFORMS WORK SIMILAR TO THE RANK AND FILE EMPLOYEES WHEN AN EMERGENCY ARISES OR TO RELIEVE AN EMPLOYEE DURING OCCASIONAL PERIODS OF ABSENCE OR EVEN TO PERFORM A PARTICULARLY IMPORTANT JOB REQUIRING SPECIAL SKILL AND EXPERIENCE, SUCH OCCASIONAL WORK IN NO WAY DEROGATES FROM HIS

PRIME FUNCTION AS A PERSON EMPLOYED IN A MANAGERIAL CAPACITY. WHEN ASSESSING A PERSON'S DUTIES AND RESPONSIBILITIES THE BOARD DOES NOT LOOK AT ANY ONE FUNCTION IN ISOLATION BUT VIEWS ALL FUNCTIONS IN THEIR ENTIRETY. AS STATED IN THE LOCAL 2890, UNITED STEEL WORKERS OF AMERICA V. THE R. McDUGALL COMPANY LIMITED CASE 1943 O.W.N. 743, TITLES ALONE ARE NOT OF MUCH ASSISTANCE IN DETERMINING WHAT A PERSON'S FUNCTIONS REALLY ARE.

WHILE THE CASES CITED ABOVE WOULD SEEM TO INDICATE THAT WHILE A PERSON MAY HAVE MINOR SUPERVISORY FUNCTIONS OR VERY LIMITED CONFIDENTIAL FUNCTIONS IN MATTERS RELATING TO LABOUR RELATIONS, IF SUCH FUNCTIONS ARE MERELY INCIDENTAL TO THEIR MAIN FUNCTION AND ARE OF SUCH A NATURE THAT THEY CANNOT BE SAID TO MATERIALLY EFFECT THE EMPLOYMENT RELATIONSHIP OF THE RESPONDENT'S EMPLOYEES, SUCH PERSONS SHOULD NOT BE EXCLUDED FROM COLLECTIVE BARGAINING BY REASON OF SECTION 1(3)(B) OF THE ACT. UNLESS A PERSON WHO REGULARLY PERFORMS WORK SIMILAR TO PERSONS IN A BARGAINING UNIT HAS INDEPENDENT DISCRETIONARY POWERS RATHER THAN MERELY INCIDENTAL REPORTING FUNCTIONS WHICH ARE SUBJECT TO THE DISCRETION AND AUTHORITY OF HIGHER PERSONS IN MANAGEMENT, THERE IS NO REASON TO EXCLUDE SUCH A PERSON FROM COLLECTIVE BARGAINING.

SIMILAR CRITERIA APPLY TO PERSONS ALLEGED TO BE EMPLOYED IN CONFIDENTIAL CAPACITIES IN MATTERS RELATING TO LABOUR RELATIONS. A PERSON TO BE EXCLUDED UNDER THIS PROVISION MUST BE "EMPLOYED IN A CONFIDENTIAL CAPACITY" I.E., SUCH CAPACITY MUST BE PART OF HIS REGULAR DUTIES. AN ACCIDENTAL OR ISOLATED INVOLVEMENT IN SOME ASPECT OF LABOUR RELATIONS IS NOT SUFFICIENT, IN OUR VIEW, TO EXCLUDE A PERSON FROM COLLECTIVE BARGAINING. HOWEVER, A REGULAR MATERIAL INVOLVEMENT IN MATTERS RELATING TO LABOUR RELATIONS WHICH ARE CONFIDENTIAL BECAUSE THEIR DISCLOSURE WOULD ADVERSELY AFFECT THE INTEREST OF THE EMPLOYER WOULD EXCLUDE A PERSON PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT. AS CAN READILY BE SEEN, THE DEGREE OF INVOLVEMENT AND THE EXTENT OF THE CONFIDENTIAL NATURE*OF THE MATTERS DEALT WITH BECOME IMPORTANT FACTORS TO BE CONSIDERED IN DETERMINING EXCLUSIONS UNDER THESE PROVISIONS.

6. THE RESPONDENT RELIED ON THE FOLLOWING STATEMENTS CONTAINED IN THE CANADIAN ACME SCREW & GEAR LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 872:

THE RESPONDENT HAS ALSO REQUESTED THE EXCLUSION OF PERSONS CLASSIFIED AS TIME STUDY TECHNICIANS. IT HAS BEEN THE BOARD'S EXPERIENCE THAT TIME STUDY TECHNICIANS ARE AT TIMES INCLUDED IN A BARGAINING UNIT AND ARE AT OTHER TIMES EXCLUDED FROM A BARGAINING UNIT DEPENDING UPON THE PARTICULAR CIRCUMSTANCES IN EACH CASE. WHERE THE BOARD INCLUDES TIME STUDY TECHNICIANS IN BARGAINING UNITS IT USUALLY DOES SO ON THE BASIS THAT WHILE THE TIME STUDY TECHNICIANS HAD REPORTING FUNCTIONS THEY HAD NO MANAGEMENT FUNCTIONS AND WERE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY TO ANY MEANINGFUL DEGREE.

IN THE INSTANT CASE, HOWEVER, THE BOARD FINDS THAT IN ADDITION TO CERTAIN REPORTING FUNCTIONS WHICH ARE EXERCISED BY THE TIME STUDY TECHNICIANS, THEY HAVE OTHER REGULAR FUNCTIONS REQUIRING THE EXERCISE OF INDEPENDENT JUDGMENT. THE TIME STUDY TECHNICIANS, IN THIS CASE, MAKE RECOMMENDATIONS AFFECTING THE ASSIGNING OF EMPLOYEES AND AT TIMES AFFECTING THE REDUCTION OF THE NUMBER OF PERSONS EMPLOYED BY THE RESPONDENT. THE TIME STUDY TECHNICIANS ARE INVOLVED IN DISCUSSIONS WITH MANAGEMENT WITH RESPECT TO THE DISPOSITION OF GRIEVANCES, WHICH DISCUSSIONS ARE CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS. THEY RECOMMEND THAT NEW EMPLOYEES BE RETAINED AND ARE ALSO ASKED TO PICK EMPLOYEES FOR THE PURPOSES OF PROMOTION. IN ADDITION, THEY REPRESENT MANAGEMENT IN DEALING WITH UNION REPRESENTATIVES AND THE UNION'S TIME STUDY TECHNICIANS. THEY ALSO REPRESENT MANAGEMENT IN RESOLVING DIFFERENCES BETWEEN THE UNION'S TIME STUDY AND THE COMPANY'S TIME STUDY, AND THEY ACT ON BEHALF OF MANAGEMENT IN ASSESSING THE UNION'S PROPOSALS FOR CHANGES IN THE COLLECTIVE AGREEMENT WHICH WOULD AFFECT STANDARDS AND THE METHODS OF SETTING STANDARDS IN THE FUTURE. ON THE BASIS OF THE UNCONTESTED EVIDENCE OF THE MANNER IN WHICH THE TIME STUDY TECHNICIANS IN THIS CASE ACT ON BEHALF OF MANAGEMENT, THE BOARD FINDS THAT THE TIME STUDY TECHNICIANS ARE REQUIRED TO PERFORM MORE THAN A SIMPLE REPORTING FUNCTION AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR

RELATIONS AND EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THEREFORE ARE NOT EMPLOYEES OF THE RESPONDENT ELIGIBLE FOR INCLUSION IN ANY BARGAINING UNIT.

7. THE RESPONDENT ALSO REFERRED THE BOARD TO THE STEEP ROCK IRON MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1968, P. 105, IN WHICH THE BOARD FOUND THAT TECHNICAL CONTROL ROOM SUPERVISORS EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND WERE NOT EMPLOYEES FOR THE PURPOSES OF THE ACT. IN THAT CASE, THE BOARD BASED ITS DECISION ON THE EVIDENCE WHICH IS OUTLINED BELOW:

HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS TECHNICAL CONTROL ROOM SUPERVISORS GIVE DIRECTION TO EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT AND HAVE AUTHORITY IN INITIATE PROCEDURE WHICH COULD LEAD TO SUCH PERSONS BEING DISCIPLINED OR DISCHARGED. THE PERSONS IN DISPUTE GIVE ORDERS AND DIRECTION TO EMPLOYEES IN THE BARGAINING UNIT AND AS A REGULAR PART OF THEIR FUNCTIONS THEY ARE REQUIRED TO INITIATE ACTION WHICH IS TAKEN BY THE FOREMAN. THE TECHNICAL CONTROL ROOM SUPERVISORS ATTEND MEETINGS OF MANAGEMENT AT WHICH MATTERS CONCERNING MANAGEMENT ARE DISCUSSED INCLUDING MATTERS RELATING TO LABOUR RELATIONS. THE TECHNICAL CONTROL ROOM SUPERVISORS HAVE BEEN TRAINED IN THE ART OF MANAGEMENT BY THE COMPANY AND HAVE BEEN GIVEN SPECIAL COURSES IN THIS RESPECT. THEY HAVE THE AUTHORITY, WHICH THEY REGULARLY EXERCISE, TO SHUT DOWN THE OPERATIONS AT THE PLANT WHEN THE OCCASION WARRANTS AND THIS POWER IS EXERCISED ON THEIR OWN AUTHORITY WITHOUT CONSULTATION WITH OTHER MEMBERS OF MANAGEMENT. BECAUSE OF THEIR FUNCTIONS IN THE RESPONDENT'S HIGHLY AUTOMATED PLANT, IT APPEARS THAT THE TECHNICAL CONTROL ROOM SUPERVISORS ACT AS THE FOREMAN'S ALTER EGO, AND RATHER THAN SIMPLY ACTING AS A CONDUIT OF INFORMATION FOR THE FOREMAN, THEY, IN FACT, INITIATE THE FOREMAN'S ACTIONS BY ADVISING WHAT ACTION SHOULD BE TAKEN IN MANY INSTANCES. THEY ALSO ASSESS THE ABILITY OF NEW EMPLOYEES TO PERFORM THEIR JOBS AND SUCH ASSESSMENT BECOMES PART OF THE EMPLOYEES' EMPLOYMENT RECORD.

8. WITH THE RAPID ADVANCE OF TECHNOLOGY AND THE USE OF MORE SOPHISTICATED MANAGEMENT TOOLS, AN EVER INCREASING NUMBER OF PERSONS ARE BECOMING ACTIVELY INVOLVED, IN VARYING DEGREES, IN ALL ASPECTS OF IMPROVING PUBLIC RELATIONS, EFFICIENCY, PRODUCTIVITY AND IN CONTROLLING THE COST OF PRODUCTION. AS MORE PERSONS BECOME INVOLVED IN THESE MATTERS, IT BECOMES INCREASINGLY DIFFICULT TO DISTINGUISH BETWEEN PERSONS WHO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND EMPLOYEES. THE DISTINCTION BETWEEN MANAGERIAL PERSONS AND EMPLOYEES CANNOT BE MADE ON THE BASIS OF TITLES OR CLASSIFICATIONS ALONE. THE DISTINCTION CAN ONLY BE BASED ON THE EVIDENCE OF THE DUTIES AND RESPONSIBILITIES EXERCISED BY SUCH PERSONS IN THE PARTICULAR CASE. SUCH DECISIONS NECESSARILY INVOLVE AN EMPIRICAL DETERMINATION OF WHETHER THE PERSON WHO MAY PERFORM FUNCTIONS WHICH RELATE TO OR BEAR UPON THE IMPROVEMENT OF PUBLIC RELATIONS EFFICIENCY, PRODUCTIVITY OR COST, IS IN FACT CONTROLLING OR DETERMINING THE PROCESS OR IS MERELY IMPLEMENTING A PROCESS WHICH HAS BEEN PREDETERMINED BY SOME PERSON IN MANAGEMENT. IT CANNOT BE DENIED THAT THESE MATTERS ARE PROPERLY THE CONCERN OF MANAGEMENT. HOWEVER, IF THE PERSON IS MERELY IMPLEMENTING A DECISION MADE BY ANOTHER AND HAS LITTLE LATITUDE TO USE ANY INDEPENDENT DISCRETION EXCEPT IN PREDETERMINED CIRCUMSCRIBED AREAS, SUCH PERSON CANNOT BE SAID TO BE EXERCISING MANAGERIAL FUNCTIONS. IF, ON THE OTHER HAND, A PERSON HAS THE INDEPENDENT DISCRETION TO FORMULATE POLICY AND METHODS OR SETS THE NECESSARY GUIDELINES FOR OTHERS TO FOLLOW, SUCH FUNCTIONS MAY PROPERLY BE DESCRIBED AS MANAGERIAL FUNCTIONS. THESE LATTER FUNCTIONS ARE READILY DISTINGUISHABLE FROM THE FUNCTIONS PERFORMED BY PERSONS WHO MERELY GATHER OR COLLATE INFORMATION WHICH WILL BE ACTED UPON BY A MEMBER OF MANAGEMENT.

9. IN ADDITION, THE FACT THAT MANAGERIAL PERSONS RELY ON THE EXPERTISE OF SENIOR EMPLOYEES OR EMPLOYEES WHO POSSESS HIGHLY TECHNICAL KNOWLEDGE AND SKILLS, AND ACT UPON THE ADVICE OF SUCH PERSONS, DOES NOT CHANGE THE NATURE OF THE FUNCTIONS EXERCISED BY THE EMPLOYEES. THE FACT THAT AN EXPERT EMPLOYEE MAY RECOMMEND A COURSE OF ACTION WHICH A MEMBER OF MANAGEMENT MAY DECIDE TO FOLLOW DOES NOT OF ITSELF MAKE THE EMPLOYEE'S RECOMMENDATION A MANAGERIAL FUNCTION. ALTHOUGH A RECOMMENDATION MAY BE THE BASIS OF THE DECISION TAKEN, HOWEVER, IT IS THE DECISION TO IMPLEMENT THE RECOMMENDATION WHICH CAN CORRECTLY BE DESCRIBED AS THE MANAGERIAL FUNCTION. IF A PERSON ACTIVELY PARTICIPATES IN THE MAKING OF SUCH DECISIONS ON A REGULAR BASIS HE MAY BE SAID TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

10. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, AS AMENDED, AND THE REPRESENTATIONS OF

THE PARTIES WITH RESPECT THERETO, AND HAVING EXPISCATED THE RELEVANT FACTS FROM THE VOLUMINOUS EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AND HAVING CONSIDERED SUCH FACTS IN THE LIGHT OF THE ABOVE CRITERIA, WE FIND THAT

J. F. BERARD	CLASSIFIED AS WORK STUDY TECHNICIAN
F. J. CAHOON	CLASSIFIED AS WORK STUDY TECHNICIAN
J. M. COLLINS	CLASSIFIED AS WORK STUDY TECHNICIAN
L. R. COFFIN	CLASSIFIED AS WORK STUDY TECHNICIAN
C. B. DIXON	CLASSIFIED AS WORK STUDY TECHNICIAN
D. S. DUKOFF	CLASSIFIED AS WORK STUDY TECHNICIAN
D. G. GIBBS	CLASSIFIED AS WORK STUDY TECHNICIAN
A. C. GOODWAY	CLASSIFIED AS WORK STUDY TECHNICIAN
J. LOWE	CLASSIFIED AS WORK STUDY TECHNICIAN
R. MCKENLAY	CLASSIFIED AS WORK STUDY TECHNICIAN
G. J. MORRISON	CLASSIFIED AS WORK STUDY TECHNICIAN
H. J. NEALE	CLASSIFIED AS WORK STUDY TECHNICIAN
W. A. NYE	CLASSIFIED AS WORK STUDY TECHNICIAN
E. C. PARKER	CLASSIFIED AS WORK STUDY TECHNICIAN
A. E. PIFKO	CLASSIFIED AS WORK STUDY TECHNICIAN
G. T. REID	CLASSIFIED AS WORK STUDY TECHNICIAN
D. K. SEALEY	CLASSIFIED AS WORK STUDY TECHNICIAN
A. J. SIRIUNAS	CLASSIFIED AS WORK STUDY TECHNICIAN
P. A. STEGER	CLASSIFIED AS WORK STUDY TECHNICIAN
J. A. THOMSON	CLASSIFIED AS WORK STUDY TECHNICIAN
B. C. WINNETT	CLASSIFIED AS WORK STUDY TECHNICIAN
G. M. FULTON	CLASSIFIED AS ASSISTANT RESEARCH OFFICER
L. DOBSON	CLASSIFIED AS SENIOR STAFF WRITER
R. MORROW	CLASSIFIED AS SENIOR STAFF WRITER
R. HOPKINS	CLASSIFIED AS STAFF WRITER
H. B. O'NEIL	CLASSIFIED AS STAFF WRITER
N. S. PANZICA	CLASSIFIED AS STAFF WRITER
S. E. BADELT	CLASSIFIED AS CLERK-STENOGRAPHER
J. WEBB	CLASSIFIED AS FIRE TRAINING INSTRUCTOR
F. A. KELLY	CLASSIFIED AS DESIGN OFFICER
L. ALEXANDER	CLASSIFIED AS SECRETARY
C. J. HUTCHESON	CLASSIFIED AS SECRETARY
P. J. SIBLEY	CLASSIFIED AS CLERK-STENOGRAPHER
O. ROZANOFF	CLASSIFIED AS SECURITY STATISTICIAN

DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

11. WE FURTHER FIND THAT

J. W. BAIN	CLASSIFIED AS SENIOR EDITOR
D. K. CARMICHAEL	CLASSIFIED AS SENIOR EDITOR
D. G. WRIGHT	CLASSIFIED AS SENIOR EDITOR

K. B. WILSON	CLASSIFIED AS RESEARCH OFFICER
C. V. WHITE	CLASSIFIED AS EDITOR, INFORMATION AND RESEARCH BUREAU
R. F. ARMSTRONG	CLASSIFIED AS PHOTO ASSIGNMENT EDITOR
A. H. BROWN	CLASSIFIED AS RADIO AND TV EDITOR
E. A. JOHNSTON	CLASSIFIED AS PHOTO FEATURE EDITOR
W. E. LAWLER	CLASSIFIED AS OUTAGE SCHEDULER
H. D. McMANUS	CLASSIFIED AS ASSISTANT SUPERVISOR
K. G. SMITHIES	CLASSIFIED AS ASSISTANT SUPERVISOR
A. BANDY	CLASSIFIED AS ASSISTANT SUPERVISOR
E. BLANFORD	CLASSIFIED AS ASSISTANT SUPERVISOR
L. EMPEY	CLASSIFIED AS COMMISSIONING SUPERVISOR
B. KILBREATH	CLASSIFIED AS COMMISSIONING SUPERVISOR
V. A. BOWMAN	CLASSIFIED AS SUPERVISING ELECTRICAL INSPECTOR

EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

12. THE APPLICATION IS WITHDRAWN AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD WITH RESPECT TO

S. R. LYNCH	D. F. POULTON
K. L. PETTS	H. V. SCHNEIDER
T. A. SHEVCIW	A. R. STANBURY
MRS. J. EVASCHUK	R. NEWMAN
P. J. VALE	A. J. FENDRICK
R. E. CHANNON	I. MOORE
A. M. THOMPSON	A. MCCARTHY
T. K. MUSKETT	T. OCZKO
G. W. BRAYBROOK	C. MACFARLANE
W. F. MALCOLM	

DECISION OF BOARD MEMBER E. BOYER: AUGUST 27, 1969.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO

K. B. WILSON	CLASSIFIED AS RESEARCH OFFICER
C. V. WHITE	CLASSIFIED AS EDITOR, INFORMATION AND RESEARCH BUREAU
R. F. ARMSTRONG	CLASSIFIED AS PHOTO ASSIGNMENT EDITOR
A. H. BROWN	CLASSIFIED AS RADIO AND TV EDITOR

E. A. JOHNSTON	CLASSIFIED AS PHOTO FEATURE EDITOR
W. E. LAWLER	CLASSIFIED AS OUTAGE SCHEDULER
H. D. McMANUS	CLASSIFIED AS ASSISTANT SUPERVISOR
K. G. SMITHIES	CLASSIFIED AS ASSISTANT SUPERVISOR
A. BANDY	CLASSIFIED AS ASSISTANT SUPERVISOR
E. BLANFORD	CLASSIFIED AS ASSISTANT SUPERVISOR

WHOM I WOULD FIND DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

DECISION OF BOARD MEMBER R. W. TEAGLE: AUGUST 27, 1969.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT
TO

G. M. FULTON	CLASSIFIED AS ASSISTANT RESEARCH OFFICER
L. DOBSON	CLASSIFIED AS SENIOR STAFF WRITER
R. MORROW	CLASSIFIED AS SENIOR STAFF WRITER
R. HOPKINS	CLASSIFIED AS STAFF WRITER
H. B. O'NEIL	CLASSIFIED AS STAFF WRITER
N. S. PANZICA	CLASSIFIED AS STAFF WRITER
S. E. BADELT	CLASSIFIED AS CLERK-STENOGRAPHER
F. A. KELLY	CLASSIFIED AS DESIGN OFFICER
L. ALEXANDER	CLASSIFIED AS SECRETARY
C. J. HUTCHESON	CLASSIFIED AS SECRETARY
P. J. SIBLEY	CLASSIFIED AS CLERK-STENOGRAPHER
O. ROZANOFF	CLASSIFIED AS SECURITY STATISTICIAN

WHOM I WOULD FIND EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

14586-68-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: DAVID LEWIS, Q.C., ROBT. RICHARDSON
AND MRS. J. SEAGER FOR THE APPLICANT, F. G. HAMILTON, G. MCHENRY,
H. L. GRIFFIN AND T. ABBOTT FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 27, 1969.

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT, FOR A DETERMINATION AS TO WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

2. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JUNE 13TH, 1969 IN THIS MATTER, AS AMENDED BY A SUPPLEMENTARY REPORT DATED JULY 11TH, 1969, A HEARING WAS HELD IN THIS MATTER ON JULY 30TH, 1969 TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EFFECT TO BE GIVEN TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.

3. FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION DATED AUGUST 27, 1969, IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, BOARD FILE 13761-67-M, THE BOARD FINDS THAT C. MORRIS, A PERSON CLASSIFIED BY THE RESPONDENT AS STAFF WRITER, DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

4. THE BOARD FURTHER FINDS THAT P. J. VALE, A PERSON CLASSIFIED BY THE RESPONDENT AS EDITOR, AND D. LEWIS, A PERSON CLASSIFIED BY THE RESPONDENT AS RESEARCH OFFICER, EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

5. THIS APPLICATION IS WITHDRAWN AT THE REQUEST OF THE APPLICANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD WITH RESPECT TO J. E. LEATHER, A. PILEGGI, P. WILSON AND H. R. PLUE.

DECISION OF BOARD MEMBER E. BOYER: August 27, 1969.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO P. J. VALE, A PERSON CLASSIFIED BY THE RESPONDENT AS EDITOR, AND D. LEWIS, A PERSON CLASSIFIED BY THE RESPONDENT AS RESEARCH OFFICER, WHOM I WOULD FIND DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

DECISION OF BOARD MEMBER R. W. TEAGLE:

AUGUST 27, 1969.

I DISSENT FROM THE MAJORITY DECISION WITH RESPECT TO C. MORRIS, A PERSON CLASSIFIED BY THE RESPONDENT AS STAFF WRITER, WHOM I WOULD FIND EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

INDEXED ENDORSEMENT - SECTION 79A

16421-69-M: TEAMSTERS INTERNATIONAL UNION LOCAL 990 (TRADE UNION)
V. LAKEHEAD FREIGHTWAYS LIMITED (EMPLOYER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND GORDON JACKSON
FOR THE TRADE UNION, G. B. WEILER, Q.C., FOR THE EMPLOYER.

DECISION OF THE BOARD: AUGUST 11, 1969.

1. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO SECTION 79A OF THE ACT, THE QUESTION AS TO WHETHER THE MINISTER HAS THE AUTHORITY UNDER SUBSECTION (4) OF SECTION 34 TO MAKE THE APPOINTMENT TO A BOARD OF ARBITRATION WHICH HAS BEEN REQUESTED BY THE EMPLOYER.

2. THE FACTS OF THIS CASE ARE NOT IN DISPUTE. THE TRADE UNION WAS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE EMPLOYER ON THE 6TH DAY OF APRIL, 1956. DURING THE TERM OF OPERATION OF A COLLECTIVE AGREEMENT BETWEEN THE PARTIES IN 1960 THE EMPLOYER WAS GRANTED AN EXTRAPROVINCIAL OPERATING LICENCE No. X-343. AT THE TIME THE EXTRAPROVINCIAL OPERATING LICENCE WAS GRANTED TO THE EMPLOYER, THE ARBITRATION PROVISIONS OF THE COLLECTIVE AGREEMENT READ AS FOLLOWS:

ARBITRATION

6.7 IT SHALL BE THE RESPONSIBILITY OF THE PARTY
DESIRING ARBITRATION TO INFORM THE OTHER
PARTY IN WRITING NOT LATER THAN FIVE (5)
DAYS AFTER THE LAST DISCUSSION OF THE
GRIEVANCE BETWEEN THE UNION AND THE
GENERAL MANAGER. A BOARD OF ARBITRATION

SHALL BE IMMEDIATELY ESTABLISHED CONSISTING OF ONE APPOINTEE OF THE UNION AND ONE APPOINTEE OF THE COMPANY, AND A THIRD MEMBER TO ACT AS CHAIRMAN APPOINTED ON THE RECOMMENDATION OF THE FIRST TWO APPOINTEES. SHOULD THE MEMBERS FAIL TO SELECT A CHAIRMAN WITHIN FIFTEEN (15) CALENDAR DAYS AFTER THE LAST DISCUSSION BETWEEN THE UNION AND THE GENERAL MANAGER - ARTICLE 6 (C) OR (D) - THE MEMBERS SHALL REQUEST THE PROVINCIAL MINISTER OF LABOUR TO NAME THE CHAIRMAN.

- 6.8 THE BOARD OF ARBITRATION SHALL NOT HAVE THE RIGHT TO ALTER OR CHANGE ANY PROVISIONS IN THIS AGREEMENT OR SUBSTITUTE ANY NEW PROVISIONS IN LIEU THEREOF, OR TO GIVE ANY DECISION INCONSISTENT WITH THE TERMS AND PROVISIONS OF THIS AGREEMENT.
- 6.9 EACH OF THE PARTIES HERETO WILL BEAR THE EXPENSE OF THEIR APPOINTEE TO THE BOARD AND THE PARTIES WILL EQUALLY BEAR THE FEES AND THE EXPENSES OF THEIR CHAIRMAN.
- 6.10 BOTH PARTIES TO THIS AGREEMENT AGREE IT IS IN THE INTEREST OF BOTH PARTIES TO MAKE EVERY REASONABLE EFFORT TO CLEAR UP GRIEVANCE PROBLEMS WITH THE LEAST POSSIBLE DELAY.
- 6.11 THE COMPANY SHALL NOT BE RESPONSIBLE FOR THE PAYMENT OF TIME USED BY AN EMPLOYEE IN THE INVESTIGATION AND SETTLEMENT OF GRIEVANCE.

3. THE ARBITRATION PROVISION OF THE COLLECTIVE AGREEMENT WHICH WAS IN OPERATION BETWEEN THE PARTIES WHEN THE DISPUTE WITH WHICH WE ARE HERE CONCERNED AROSE WAS IN THE SAME TERMS AS SET OUT ABOVE.

4. THE PARTIES AGREE THAT BECAUSE THE EMPLOYER IS NOW OPERATING AS AN INTRAPROVINCIAL CARRIER THE LABOUR RELATIONS OF THE PARTIES NOW FALL UNDER FEDERAL JURISDICTION AND THE ONTARIO LABOUR RELATIONS ACT IS NOT APPLICABLE TO IT. THIS BOARD MUST ACCORDINGLY FIND THAT THE MINISTER HAS NO JURISDICTION UNDER THE PROVISIONS OF SECTION 34(4) OF THE LABOUR RELATIONS ACT TO MAKE AN APPOINTMENT BINDING UPON THE PARTIES.

5. IT SHOULD BE NOTED, HOWEVER, THAT THE PARTIES AGREE THAT THE MINISTER IS NAMED AS PERSONA DESIGNATA UNDER THE PROVISIONS OF ARTICLE 6.7 OF THE COLLECTIVE AGREEMENT. HOWEVER, THIS BOARD HAS NO JURISDICTION TO INTERPRET THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES AND TO ADVISE THE MINISTER OF THE EXTENT OF HIS POWER AS PERSONA DESIGNATA UNDER THE TERMS OF THE COLLECTIVE AGREEMENT.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT THE LABOUR RELATIONS ACT HAS NO APPLICATION TO THE RELATIONS BETWEEN THE TRADE UNION AND THE EMPLOYER AND THIS BOARD HAS NO JURISDICTION TO ADVISE THE MINISTER AS TO THE EXTENT OF HIS AUTHORITY IN THIS MATTER.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

16109-69-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) V. RIA CONSTRUCTION LIMITED (RESPONDENT) V. BRICKLAYERS, MASONS & TILESETTERS UNION, LOCAL NO. 2 ONTARIO (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: August 13, 1969.

1. BY LETTER DATED AUGUST 6TH, 1969, COUNSEL FOR THE APPLICANT REQUESTED THAT THE BOARD MAKE A RULING WITH RESPECT TO THE STATUS OF THE INTERVENER IN THIS APPLICATION IN VIEW OF THE FACT THAT THE APPLICANT RAISED IT AS AN ISSUE AT THE HEARING OF THE APPLICATION.

2. COUNSEL FOR THE APPLICANT DREW TO THE ATTENTION OF THE BOARD ARTICLE XII OF THE CONSTITUTION OF THE BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA. PARAGRAPH ONE OF SECTION 1 OF ARTICLE XII READS:

MEMBERSHIP. -- NO PERSON SHALL BE ACCEPTED INTO MEMBERSHIP IN THIS ORGANIZATION UNLESS HE IS FIRST VOUCHERED FOR AS BEING A CITIZEN, OR HAS DECLARED HIS INTENTION, IN THE MANNER PRESCRIBED BY THE LAW, TO BECOME SUCH OF THE COUNTRY UNDER THIS JURISDICTION.

3. THE APPLICANT ALSO FILED WITH THE BOARD AN APPLICATION FOR MEMBERSHIP FORM IN THE INTERVENER. ON THE APPLICATION ARE THE FOLLOWING TWO QUESTIONS:

1. ARE YOU NOW A CITIZEN OF THE UNITED STATES
OR CANADA? ANSWER

2. IF NOT, HAVE YOU FILED YOUR DECLARATION OF INTENTION TO BECOME ONE? ANSWER

4. THE FOLLOWING PARAGRAPH APPEARS AT THE BOTTOM OF THE APPLICATION FOR MEMBERSHIP FORM:

A NEGATIVE ANSWER TO THE FIRST TWO QUESTIONS REJECTS THE APPLICANT. IN CASE OF AN AFFIRMATIVE ANSWER TO EITHER OF THE LAST TWO QUESTIONS, THE INITIATION SHALL BE LAID OVER UNTIL AN INVESTIGATION HAS BEEN MADE IN THE LOCALITY OR UNION WHICH HE CAME FROM.

5. COUNSEL FOR THE APPLICANT SUBMITS THAT THE CONSTITUTION OF THE INTERVENER AND THE APPLICATION FOR MEMBERSHIP FORM ARE DISCRIMINATORY AGAINST PERSONS BASED ON THEIR NATIONALITY AND ACCORDINGLY THE BOARD SHOULD NOT ACCORD THE INTERVENER THE STATUS OF A TRADE UNION.

6. IN REPLY TO THE ALLEGATIONS OF COUNSEL FOR THE APPLICANT, COUNSEL FOR THE INTERVENER ADVISED THE BOARD THAT THERE WERE CURRENTLY MANY MEMBERS OF THE INTERVENER WHO WERE NOT CANADIAN CITIZENS AND WHO HAD NOT INDICATED ANY INTENTION OF BECOMING CANADIAN CITIZENS. COUNSEL FURTHER ADVISED THE BOARD THAT NO PERSON HAD BEEN DENIED MEMBERSHIP IN THE INTERVENER BASED ON THE FACT THAT HE WAS NOT A CANADIAN CITIZEN AND HAD NOT DECLARED HIS INTENTION OF BECOMING A CITIZEN OF THIS COUNTRY. THERE WAS ALSO FILED WITH THE BOARD A TELEGRAM DATED MAY 22ND, 1969, SIGNED BY SAMUEL A. SASSO, CANADIAN VICE-PRESIDENT OF THE INTERVENER, ADDRESSED TO JOHN ZANUSSI, BUSINESS MANAGER OF LOCAL NO. 2, WHICH READS:

I WISH TO CONFORM WITH YOU THAT NOTWITHSTANDING THE EXISTENCE OF SECTION TWELVE OF THE CONSTITUTION AND RULES OF ORDER IT HAS CONSTANTLY BEEN PRACTICED BY THIS INTERNATIONAL AND ALL OF ITS LOCALS OVER THE PAST HAS BEEN THE PRACTICE NOT TO REQUIRE PROOF OF CITIZENSHIP OR INTENTION OF BECOMING A CITIZEN OF THE COUNTRY IN WHICH THE PROSPECTIVE MEMBER OF THE UNION IS APPLYING FOR MEMBERSHIP IN A LOCAL OF OUR UNION. NO PERSON IS DENIED MEMBERSHIP IN A LOCAL OF OUR UNION JUST BECAUSE HE IS NOT A CITIZEN OF CANADA OR UNITED STATES OR EVEN IF HE HAS NOT DECLARED HIS INTENTION OF BECOMING A CITIZEN.

7. IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, OLRB M.R. AUGUST 1967 437, THE BOARD OUTLINED ITS POLICY WITH RESPECT TO THE QUESTION OF "ELIGIBILITY" FOR MEMBERSHIP IN A TRADE UNION AND THE EFFECT OF ANY LIMITATION APPEARING IN THE UNION'S CONSTITUTION.

THE BOARD STATED AT 441:

UNQUESTIONABLY IN CONSIDERING THE "ELIGIBILITY" PROBLEM, THE BOARD HAS TAKEN INTO CONSIDERATION THE CONSTITUTION OF THE PARTICULAR UNION IN QUESTION. IT IS ONE OF THE FACTORS WHICH THE BOARD LOOKS AT IN DETERMINING WHETHER A PERSON IS A MEMBER OF THE UNION. THUS, IF THERE IS A CLEAR-CUT PROHIBITION OR EXPRESS EXCLUSION WITH RESPECT TO A CERTAIN CLASS OF PERSONS (SEE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126, ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170), THE BOARD WILL REFUSE TO CERTIFY AN APPLICANT UNION IF THE CLASS OF PERSONS IN QUESTION IS TO BE INCLUDED IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE REASON FOR THIS IS THAT A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES. TO THAT EXTENT AND FOR THAT PURPOSE, THEN, THE BOARD DOES HAVE REGARD TO UNION CONSTITUTIONS.

ON THE OTHER HAND, THE BOARD HAS ALSO SAID IF THERE IS NO EXPRESS EXCLUSION (CF. ALDERSHOT CONTRACTORS EQUIPMENT RENTALS LIMITED, SUPRA, N. D. APPLGATE LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, P. 104) OF A PARTICULAR CLASS OR CLASSES OF EMPLOYEES AFFECTED BY THE APPLICATION, IT WILL NOT ENTERTAIN AN OBJECTION TO THE APPLICATION BASED ON THE ELIGIBILITY PROVISIONS OF AN APPLICANT UNION'S CONSTITUTION. IN A CASE OF THIS NATURE THE BOARD MAY ALSO HAVE REGARD TO THE INTERPRETATION WHICH RESPONSIBLE OFFICIALS OF THE UNION HAVE PLACED ON THE PROVISIONS OF THE CONSTITUTION AND TO THE PRACTICE OF THE UNION WITH RESPECT TO THE ADMISSION OF PERSONS AS MEMBERS. SEE WAYNE PUMP CANADA LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER, 1966, P. 489; JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564.

FURTHERMORE, EVEN WHERE THERE IS AN EXPRESS EXCLUSION IN A UNION CONSTITUTION, IT IS IMPLICIT IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THAT THE INTERPRETATION PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICERS OR PROOF OF UNEQUIVOCAL PAST

PRACTICES OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS WILL OVERCOME THE LANGUAGE OF THE CONSTITUTION. THERE IS NO DOUBT IN OUR MINDS THAT THIS ACCURATELY REFLECTS BOARD POLICY AND, FURTHER, THAT THE HIGH SCHOOL BOARD OF EASTVIEW CASE IS IN LINE WITH THIS POLICY.

IN SUM, THEN, IN DETERMINING WHETHER AN APPLICANT TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN AN APPROPRIATE BARGAINING UNIT, WHAT THE BOARD IS CONCERNED WITH IS WHETHER THE UNION ACCORDS ALL SUCH EMPLOYEES FULL RIGHTS AND PRIVILEGES AS MEMBERS. IF THE EVIDENCE SUPPORTS THIS CONCLUSION, THEN THE BOARD IS PREPARED TO FIND THAT SUCH EMPLOYEES ARE ELIGIBLE TO BECOME MEMBERS (AND, DEPENDING ON THE EVIDENCE, THAT THEY ARE MEMBERS) FOR THE PURPOSES OF SECTION 7 OF THE ACT AND, FURTHER, THAT THE TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN THE UNIT. WE HASTEN TO ADD, HOWEVER, THAT IF IT SHOULD SUBSEQUENTLY COME TO LIGHT THAT EMPLOYEES IN THE BARGAINING UNIT ARE NOT BEING ACCORDED FULL STATUS AS MEMBERS OF THE UNION, THEN, NATURALLY, THE BOARD WOULD HAVE TO REVIEW ITS DECISION IN THE PARTICULAR CASE AND WOULD BE OBLIGED TO TAKE THIS INTO ACCOUNT IN SUBSEQUENT CASES. HOWEVER, THE POSSIBILITY THAT THIS MAY OCCUR IN THE FUTURE IS NO GROUND, IN OUR VIEW, FOR WITHHOLDING BARGAINING RIGHTS IN ANY PARTICULAR CASE.

8. IN THE PRESENT CASE, WHILE THE INTERNATIONAL'S CONSTITUTION OF THE INTERVENER APPEARS TO CONFINE ELIGIBILITY FOR MEMBERSHIP IN THE UNION TO CANADIAN CITIZENS OR PERSONS WHO HAVE DECLARED THEIR INTENTION OF BECOMING CITIZENS OF CANADA, THERE IS CLEAR EVIDENCE BY A RESPONSIBLE SENIOR OFFICER OF THE INTERVENER OF AN UNEQUIVOCAL PAST PRACTICE OF ACCEPTING PERSONS INTO MEMBERSHIP REGARDLESS OF WHETHER OR NOT THE PERSONS ARE CANADIAN CITIZENS OR HAVE DECLARED THEIR INTENTION TO BECOME CITIZENS.

9. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE INTERVENER, IN FACT, DOES NOT DISCRIMINATE WITH RESPECT TO MEMBERSHIP ON THE BASIS OF NATIONALITY. ACCORDINGLY, THE INTERVENER IS NOT A TRADE UNION WHICH VIOLATES SECTION 10 OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

15598-68-U: ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000 CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN. AUGUST 21, 1969.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, K. CUMMINGS, W. McCULLOUGH FOR THE APPLICANT; B.A. KELSEY, G.M. McHENRY, H.M. ROSSMAN FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES August 21, 1969.

1. SUBSEQUENT TO THE BOARD'S DECISION DATED MAY 5TH 1969, IN THIS MATTER, THE RESPONDENT BY LETTER DATED MAY 13TH 1969 REQUESTED THE BOARD TO RECONSIDER ITS DECISION. THE MATTER WAS SUBSEQUENTLY LISTED FOR HEARING:

- (A) TO ENABLE THE RESPONDENT TO SHOW CAUSE WHY THE BOARD SHOULD RECONSIDER ITS DECISION DATED MAY 5, 1969
- (B) TO CLARIFY THE REQUEST OF THE RESPONDENT IN ITS LETTER DATED MAY 13, 1969
- (C) TO DETERMINE THE MANNER OF PROCEEDING IN THE REMAINING CASES WITH RESPECT TO K. MOORE AND JIM SHAW.

THE RESPONDENT INDICATED ITS AGREEMENT WITH THE FIRST NINE PARAGRAPHS OF THE BOARD'S DECISION. IN ITS LETTER THE RESPONDENT STATED "...CERTAIN FUNDAMENTAL ISSUES REQUIRING DETERMINATION HAVE NOT BEEN DECIDED. IN PARTICULAR:

1. IF AN EMPLOYEE REMAINS AT WORK, ACCEPTING THE TERMS AND CONDITIONS OF THE EMPLOYER, HE CANNOT SELECT ASPECTS OF HIS WORK AGAINST WHICH HE MAY "STRIKE". TO EQUATE THE RIGHT TO STRIKE WITH THE RIGHT TO DISOBEY LAWFUL INSTRUCTIONS, UNDERMINES AND DESTROYS THE WORKING BASIS OF AN EMPLOYER-EMPLOYEE RELATIONSHIP. BY DEFINING THIS REFUSAL TO WORK OVERTIME AS A "STRIKE", ORDERLY CONTROL IN THE WORK PLACE IS UNDERMINED.

2. ESSENTIAL TO THE DETERMINATION OF THIS WHOLE ISSUE IS AN APPRECIATION OF THE EMPLOYMENT RELATIONSHIP INCLUDING THE DUTIES OWED BY AN EMPLOYEE TO HIS EMPLOYER. IN ORDER TO DETERMINE WHETHER THE EMPLOYEE WAS BOUND TO OBEY THE REQUIREMENT TO WORK OVERTIME, THE BOARD WAS OBLIGED TO DECIDE THE NATURE AND EXTENT OF THE RELATIONSHIP BETWEEN THE COMMISSION AND THE EMPLOYEE. THE OBLIGATION AT LAW TO WORK OVERTIME MUST BE DERIVED FROM A FORMULATION OF THAT RELATIONSHIP AND THE RIGHTS AND DUTIES OF THE PARTIES FLOWING THEREFROM. BY REFUSING OR FAILING TO MAKE SUCH DETERMINATION, THE BOARD HAS, IN OUR RESPECTFUL SUBMISSION, NOT FULFILLED THE TASK ASSIGNED TO IT BY THE LEGISLATION AND THUS HAS FAILED TO DISCHARGE ITS STATUTORY DUTIES.

3. IN PARAGRAPH 18 OF ITS DECISION, THE BOARD HAS DECLINED TO ACT ON THE BASIS OF EVIDENCE TENDERED BY THE RESPONDENT MATERIAL TO THE ISSUE OF WHETHER OR NOT THERE WAS AN EMERGENCY. IN OUR RESPECTFUL SUBMISSION, THE DETERMINATION OF THE EXISTENCE OF AN "EMERGENCY" RESTS SOLELY WITH THE COMMISSION IN THE DISCHARGE OF ITS PUBLIC RESPONSIBILITIES. THE EVIDENCE TENDERED IN THIS RESPECT WAS THEREFORE NOT OF A HEARSAY NATURE QUA THE COMMISSION BUT WAS RELEVANT, ADMISSIBLE AND ESSENTIAL TO A PROPER DETERMINATION OF THE ISSUE OF EMERGENCY."

2. WE ARE SATISFIED THAT THE RESPONDENT HAS NOT SHOWN CAUSE AS TO WHY THE BOARD SHOULD RECONSIDER ITS DECISION. ALL OF THE ISSUES RAISED BY THE RESPONDENT WERE CAREFULLY CONSIDERED BY THE BOARD IN ARRIVING AT ITS ORIGINAL DECISION AND ARGUMENT WAS ADDRESSED TO ALL THESE ISSUES. IN ADDITION THE RESPONDENT DOES NOT SEEK TO INTRODUCE ANY NEW EVIDENCE THAT WAS NOT AVAILABLE AT THE ORIGINAL HEARING.

3. BECAUSE THIS WAS A SHOW CAUSE HEARING AND NOT A RECONSIDERATION, WE PROPOSE TO BRIEFLY COMMENT ON THE MATTERS RAISED BY THE RESPONDENT, SERIATIM:

- 1) THE CONCEPT OF STRIKE WAS CONSIDERED IN THE ORIGINAL DECISION, AS WERE THE FACTS, THE APPLICABLE LEGISLATION AND RELEVANT CASES. ARGUMENT WAS ADDRESSED TO THAT ISSUE AND WE SEE NO REASON TO RECONSIDER OUR ORIGINAL DECISION IN THAT REGARD.
- 2) THE NATURE OF THE EMPLOYER-EMPLOYEE RELATIONSHIP WAS CONSIDERED IN ARRIVING AT OUR DECISION; WE DID NOT REFUSE TO MAKE SUCH A DETERMINATION, AND ALTHOUGH WE DID NOT DEFINE THE "EXACT NATURE OF THE RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE THAT WAS PRESERVED IN THIS CASE" WE ASSESSED THE EMPLOYER-EMPLOYEE RELATIONSHIP INCLUDING THE NATURE OF "OVERTIME" FOR THE PURPOSE OF DECIDING ALL THE RELEVANT ISSUES THAT AROSE IN THIS CASE. WE NOTE THAT CARTWRIGHT J. (AS HE THEN WAS) IN CANADIAN PACIFIC RAILWAY COMPANY V. ZAMBRI, 62 CLC 450, 1962 S.C.R. 609 (SUPREME COURT OF CANADA), ALSO, DID NOT DECIDE THE EXACT NATURE OF THE RELATIONSHIP PRESERVED BY SECTION 1(2), BUT WAS ABLE TO ARRIVE AT A DECISION IN THE ZAMBRI CASE, SUPRA. WE SEE NO REASON TO RECONSIDER OUR DECISION IN THAT REGARD.

- 3) THE DETERMINATION OF WHETHER OR NOT THERE WAS AN EMERGENCY WAS BASED ON THE EVIDENCE ADDUCED AT THE HEARING AND WAS CONSIDERED IN ARRIVING AT OUR DECISION. WE SEE NO REASON TO RECONSIDER OUR DECISION IN THAT REGARD.

4. DURING THE SHOW CAUSE HEARING A QUESTION AROSE AS TO WHETHER WE HAD CONSIDERED MOTIVE IN ARRIVING AT OUR DECISION. THERE IS NO DOUBT THAT THE QUESTION OF MOTIVE WAS CONSIDERED AND THAT WE FOUND THE MOTIVE NECESSARY TO FIND A VIOLATION OF THE LABOUR RELATIONS ACT. ACCORDINGLY, ALL MATTERS HAVING BEEN FULLY ARGUED AND CONSIDERED, THE REQUEST FOR RECONSIDERATION IS DENIED. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING FOR THE PURPOSE OF PROCEEDING WITH RESPECT TO K. MOORE AND JIM SHAW.

DECISION OF BOARD MEMBER H.F. IRWIN: August 21, 1969.

WITHOUT DEROGATING IN ANY WAY WHATSOEVER FROM MY DISSENTING DECISION DATED MAY 5TH, 1969, I CONCUR THAT THE REQUEST BY THE RESPONDENT FOR RECONSIDERATION OF THE BOARD'S DECISION OF THE SAME DATE BE DISMISSED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

16427-69-R: CHRISTIAN TRADE UNIONS OF CANADA (LOCAL 6) (APPLICANT)
V. ALLARD CONSTRUCTION OF ONTARIO LIMITED (RESPONDENT).

6. ALTHOUGH BOTH THE APPLICANT AND THE RESPONDENT HAVE REQUESTED A BARGAINING UNIT IN TERMS OF "AT AND WORKING OUT OF HAMILTON", THIS BEING A CONSTRUCTION INDUSTRY APPLICATION THE BOARD SEES NO REASON FOR DEPARTING FROM ITS STANDARD GEOGRAPHIC AREA. ACCORDINGLY, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(AUGUST 7, 1969).

16502-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. STARNINO CONSTRUCTION LIMITED (RESPONDENT).

5. THE RESPONDENT HAS ASKED FOR THE EXCLUSION, FROM THE BARGAINING UNIT OF STUDENTS EMPLOYED DURING THE SUMMER VACATION PERIOD. IT HAS BEEN A LONG ESTABLISHED POLICY OF THE BOARD IN CASES IN THE CONSTRUCTION INDUSTRY TO INCLUDE STUDENTS IN CONSTRUCTION INDUSTRY BARGAINING UNITS. (SEE CORNWALL GRAVEL COMPANY

LIMITED CASE, OLRB, M.R. Nov. 1967, p. 797.) WE SEE NO REASON FOR DEPARTING FROM THIS ESTABLISHED POLICY IN THE PRESENT CASE, ACCORDINGLY THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(August 11, 1969).

16505-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. ARGO CONSTRUCTION LTD. (RESPONDENT).

6. SUBSEQUENT TO THE APPOINTMENT OF THE EXAMINER IN THIS CASE, THE RESPONDENT INFORMED THE BOARD THAT THE EMPLOYEE LISTED ON SCHEDULE D OF THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, WORKED AT THE JOB SITE, FOR A PERIOD OF TWO HOURS ON THE DAY OF THE MAKING OF THE APPLICATION. HE IS THEREFORE, INCLUDED IN THE LIST OF EMPLOYEES IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT (SEE REDFERN CONSTRUCTION COMPANY LIMITED CASE, OLRB, M.R. Nov. 1967, p. 799). THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 13TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

(August 27, 1969).

16539-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. WILLIAM ALFRED ELLIS JR. (RESPONDENT).

THE FOLLOWING BARGAINING UNIT IS NOTED BECAUSE THIS IS THE FIRST TIME THAT THE BOARD HAS CERTIFIED A CONSTRUCTION TRADE UNION FOR THE GEOGRAPHIC AREA DESCRIBED IN THIS BARGAINING UNIT.

6. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDougall, Cowper, Foley and Conger IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

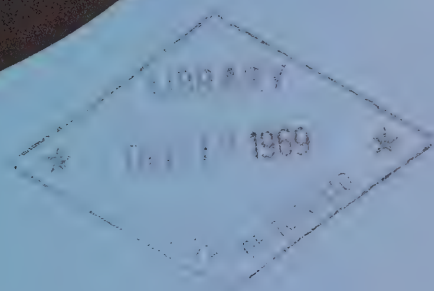
(August 19, 1969).

PTEMBER, 1969



ONTARIO

Monthly Report



NTARIO LABOUR RELATIONS BOARD

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DURING SEPTEMBER 1969

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

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16125-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WELLAND, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 726).

16126-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WELLAND, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, HEAD CASHIERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

16127-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT PORT COLBORNE, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 728).

16128-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNNVILLE, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THAT RANK, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND SCHOOL VACATION PERIODS." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 729).

16129-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNNVILLE, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, HEAD CASHIERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

16130-69-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. UNIVERSITY OF TORONTO (RESPONDENT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL SECURITY OFFICERS OR SECURITY GUARDS IN THE EMPLOY OF THE UNIVERSITY OF TORONTO AT ITS ST. GEORGE CAMPUS, SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204." (27 EMPLOYEES IN THE UNIT).

16176-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT ST. CATHARINES SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, HEAD CASHIERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JULY 7TH, 1969, AND THE REPRESENTATIONS OF THE PARTIES AT THE HEARING OF THE BOARD WITH RESPECT THERETO).

16235-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT PORT COLBORNE, SAVE AND EXCEPT MEAT DEPARTMENT EMPLOYEES, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, HEAD CASHIERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

16303-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. TIP TOP CANNERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

16326-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. MERIDIAN DEVELOPMENTS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (67 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 732).

16329-69-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. LOCAL 197 (APPLICANT) V. CORK-TOWN PUBLIC HOUSE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 734).

16343-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BRUCE MUNICIPAL TELEPHONE SYSTEM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS TELEPHONE SYSTEM IN BRUCE COUNTY ENGAGED IN MAINTENANCE AND CONSTRUCTION, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16363-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SAULT STE. MARIE DISTRICT ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (27 EMPLOYEES IN THE UNIT).

16403-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BRANT COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT CHIEF CARETAKERS AND PERSONS ABOVE THE RANK OF CHIEF CARETAKER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (124 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 744).

16450-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. MOTORCO EMPLOYEES (PLANT THREE) CREDIT UNION LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 749).

16476-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL CIO CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WINDSOR WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING OFF-SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (209 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16498-69-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. BURMAR INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE COMMODORE HOTEL AT PENETANGUISHENE, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, PERSONS REGULARLY

EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND RESPONDENT DATED APRIL 1, 1969." (3 EMPLOYEES IN THE UNIT).

16499-69-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 47 (APPLICANT) V. ECONO HEATING (OTTAWA) LTD. (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING AT AND OUT OF OTTAWA, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (17 EMPLOYEES IN THE UNIT).

16541-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (APPLICANT) V. BAYFIELD SERVICES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDUGAL, COWPER, FOLEY AND CONGER IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 752).

16546-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RUSHBANK METAL INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

16561-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF NEPEAN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION AND MAINTENANCE OF THE PARKS AND RECREATION DEPARTMENT OF THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT ASSISTANTS TO THE DIRECTORS, PERSONS ABOVE THE RANK OF ASSISTANTS TO THE DIRECTORS, OFFICE STAFF AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CORPORATION OF THE TOWNSHIP OF NEPEAN AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1021." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16563-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. KROMET HANDLES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

16567-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. CATKEY CONSTRUCTION (TORONTO) LIMITED - JOINT VENTURE (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIPS OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

16568-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. UNIVERSAL SECTIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (81 EMPLOYEES IN THE UNIT).

16573-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. WINDSOR CHROME PLATING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

16575-69-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. LEMBO CORPORATION OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

16576-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. THRIFTY DRUGS LIMITED CARRYING ON BUSINESS UNDER THE TRADE NAME OF SHOPPERS DRUG MART (RESPONDENT). - AND -

16577-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. THRIFTY DRUGS LIMITED CARRYING ON BUSINESS UNDER THE TRADE NAME OF SHOPPERS DRUG MART (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMALEA, SAVE AND EXCEPT FLOOR MANAGER, PERSONS ABOVE THE RANK OF FLOOR MANAGER, OFFICE STAFF, GRADUATE AND UNDERGRADUATE PHARMACISTS AND STUDENTS HIRED FOR AND EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16578-69-R: UNION OF CANADIAN RETAIL, EMPLOYEES, C.L.C. (APPLICANT) V. LOBLAW GROCETERIAS Co., LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS ADVERTISING, DUPLICATING AND SILK SCREEN DEPARTMENTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGERS AND SECRETARIES." (44 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16587-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. EMCO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLASTICS PLANT IN BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS AND STUDENTS ENGAGED ON A COOPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE." (47 EMPLOYEES IN THE UNIT).

16589-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. LIQUID CARBONIC CANADIAN CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT DEPOT SUPERVISOR, PERSONS ABOVE THE RANK OF DEPOT SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

16591-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DIESEL EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (93 EMPLOYEES IN THE UNIT).

16607-69-R: DENTAL TECHNICIAN'S UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. WALTER WOOD DENTAL LABORATORIES LIMITED (RESPONDENT).

UNIT: "ALL DENTAL TECHNICIANS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE STAFF, DRIVERS FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (4 EMPLOYEES IN THE UNIT).

16608-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. LINDBERG & HOMBURGER LABORATORIES LTD. (RESPONDENT).

UNIT: "ALL DENTAL TECHNICIANS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE STAFF, DRIVERS, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (9 EMPLOYEES IN THE UNIT).

16610-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE OXFORD COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

16613-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. BIELD CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16614-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. RAYMOND MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

16615-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT PORT COLBORNE, ONTARIO, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

16616-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. SOGELA INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16618-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. R. W. TOMILSON CARTAGE (RESPONDENT).

UNIT: "ALL DRIVERS OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMEN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

16619-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. TOR-WIN CONSTRUCTION (RESPONDENT).

UNIT: "ALL LABOURERS AND CEMENT FINISHERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT FOREMEN, AND PERSONS ABOVE THE RANK OF FOREMAN." (4 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE A.K. PENNER AND SONS LTD. CASE, OLRB, M.R., OCT. 1966, P. 493 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT.

16620-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. TECUMSEH ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE A.K. PENNER AND SONS LTD. CASE, OLRB, M.R., OCT. 1966, P. 493 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT.

16631-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. DURNO CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16633-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNNVILLE, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

16635-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. PLAZA DRUG STORES LTD. (TORONTO) CARRYING ON BUSINESS UNDER THE NAME OF SHOPPERS DRUG MART (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT FLOOR MANAGER, PERSONS ABOVE THE RANK OF FLOOR MANAGER, OFFICE STAFF, GRADUATE AND UNDERGRADUATE PHARMACISTS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16636-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BYERS TRUCK AND TRAILER EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

16637-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. POSEN & FURIE DENTAL LABORATORIES LIMITED (RESPONDENT).

UNIT: "ALL DENTAL TECHNICIANS OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16648-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. PREBEC INC. (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 765 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 AND PREBEC INC. DATED MAY 1ST, 1966." (5 EMPLOYEES IN THE UNIT).

16650-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. REIDS' MARINE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT POINTE AU BARIL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

16651-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. METRO WINDSOR-ESSEX COUNTY HEALTH UNIT (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CHIEF INSPECTOR, PERSONS ABOVE THE RANK OF CHIEF INSPECTOR, AND REGISTERED NURSES." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16657-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KIRKLAND LAKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

16658-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. TURE-ANDERSON (EASTERN) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16659-69-R: TOBACCO WORKERS INTERNATIONAL UNION (A.F.L. - C.I.O. & C.L.C.) (APPLICANT) V. ONTARIO TOBACCO COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, AND OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

16660-69-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. REG WILLSON PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 764).

16661-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BOT CONSTRUCTION (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (22 EMPLOYEES IN THE UNIT).

16662-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. DECOR METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16664-69-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. UNIVERSITY OF TORONTO (RESPONDENT) V. SERVICE EMPLOYEES UNION, LOCAL 204, A. F.L., C.I.O., C.L.C. (INTERVENER).

UNIT: "ALL SECURITY OFFICERS OR SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT AT ITS ERINDALE CAMPUS IN MISSISSAUGA, SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES DATED SEPTEMBER 25, 1969).

16668-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (APPLICANT) V. STUART HOUSE INTERNATIONAL LIMITED (RESPONDENT)
V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE
AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN
AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

16669-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CHUBB-MOSLER
AND TAYLOR SAFES LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE
COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF
REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF
YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY
OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16674-69-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA (APPLICANT) V. BRINK'S EXPRESS COMPANY OF
CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE
AND EXCEPT BRANCH MANAGER, PERSONS ABOVE THE RANK OF BRANCH MANAGER,
OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE
THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

16675-69-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF AMERICA
AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. YORK UNIVERSITY
(RESPONDENT) V. SERVICE EMPLOYEES UNION, LOCAL 204, A.F.L., C.I.O.,
C.L.C. (INTERVENER).

-AND -

16676-69-R: INTERNATIONAL UNION UNITED PLANT GUARD WORKERS OF
AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. YORK UNIVERSITY
(RESPONDENT).

UNIT: "ALL SECURITY OFFICERS OF THE RESPONDENT IN METROPOLITAN
TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF
SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK." (20 EMPLOYEES IN THE UNIT).

16681-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267
(APPLICANT) V. CO. SUPERIORE NAFTA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN AND AROUND METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (5 EMPLOYEES IN THE UNIT).

16683-69-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL 1962 (APPLICANT) V. UNIVERSITY OF TORONTO (RESPONDENT) V. SERVICE EMPLOYEES UNION, LOCAL 204, AFL-CIO-CLC (INTERVENER).

UNIT: "ALL SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT AT SCARBOROUGH COLLEGE, SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16684-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2759 (APPLICANT) V. WEYERHAEUSER CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PAPINEAU TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

16686-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. TRAFALGAR FUELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (3 EMPLOYEES IN THE UNIT).

16687-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. DENTAL PROSTHETICS LABORATORY LTD. (RESPONDENT).

UNIT: "ALL DENTAL TECHNICIANS EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

16696-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MACDONALDS CONSOLIDATED LIMITED (RESPONDENT).

UNIT #1: "ALL OFFICE EMPLOYEES OF THE RESPONDENT IN THE CITY OF THUNDER BAY, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, BUYERS (GROCERY AND PRODUCE), SECRETARY TO THE MANAGER AND PAYROLL CLERK AND ALL PART-TIME EMPLOYEES." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

(APPLICANT CERTIFIED).

UNIT #2: "ALL WAREHOUSE EMPLOYEES OF THE RESPONDENT IN THE CITY OF THUNDER BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALESMEN, BUYERS AND PRICERS (GROCERY AND PRODUCE), OFFICE EMPLOYEES AND ALL PART-TIME WAREHOUSE EMPLOYEES." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

(APPLICATION DISMISSED).

16697-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE VENDING DIVISION IN THE CITIES OF CHATHAM, SARNIA & WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16730-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. SAYERS & ASSOCIATES LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16747-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #249 (APPLICANT) V. C. A. JOHANNSSEN & SONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSLOWNE, FRONT OF LEEDS AND LANSLOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

16393-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. SHELL CANADA LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

- AND -

16422-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. SHELL CANADA LIMITED (RESPONDENT) V. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (INTERVENER #1) V. SHELL OAKVILLE REFINERY EMPLOYEES' COUNCIL (INTERVENER #2).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS STEAM PLANT AT ITS REFINERY AT OAKVILLE, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER."

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
BALLOT BOX SEALED	

(INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 722 DISMISSED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS REFINERY AT OAKVILLE, SAVE AND EXCEPT SHIFT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SHIFT SUPERVISOR AND FOREMAN, LABORATORY PERSONNEL, WAREHOUSEMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STUDENTS EMPLOYED UNDER A CO-OPERATIVE TRAINING PROGRAMME WITH A UNIVERSITY." (81 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	70
NUMBER OF PERSONS WHO CAST BALLOTS	70
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
OIL, CHEMICAL AND ATOMIC WORKERS	
INTERNATIONAL UNION	52
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
SHELL OAKVILLE REFINERY EMPLOYEES'	
COUNCIL	18

(OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION CERTIFIED).

(SEE INDEXED ENDORSEMENT PAGE 741).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

16194-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ELLIOT LAKE CENTRE FOR CONTINUING EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELLIOT LAKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND TEACHING STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (31 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		40
NUMBER OF PERSONS WHO CAST BALLOTS	37	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	28	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9	

16296-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. PLASTICAP LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT RICHMOND HILL SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		54
NUMBER OF PERSONS WHO CAST BALLOTS	54	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	28	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	25	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

No VOTE CONDUCTED

16365-69-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLAZIERS AND GLASSWORKERS, LOCAL UNION 1819 (APPLICANT) V. PILKINGTON BROTHERS (CANADA) LIMITED (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 424 (INTERVENER). (88 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 736).

16570-69-R: THE BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL #30 (APPLICANT) V. J. D. COAD CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 755).

16609-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. N.D.L. LABORATORIES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (5 EMPLOYEES).

16617-69-R: L.U. 1739 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ED WALKERS ELECTRIC LTD. (RESPONDENT) V. GROUP OF EMPLOYEES). (17 EMPLOYEES).

16622-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. KUZMAS CONSTRUCTION CO. LTD. (RESPONDENT). (32 EMPLOYEES).

16639-69-R: PRINCE EDWARD ELECTRICAL WORKERS' ASSOCIATION (APPLICANT) V. PROCTOR-LEWYT DIVISION OF S C M (CANADA) LIMITED (RESPONDENT). (165 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 760).

16678-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. FINLEY McLACHLAN LIMITED (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

15604-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SHERMAN MINE, CLIFFS OF CANADA, LIMITED, MANAGER (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ITS SHERMAN MINE IN THE IMPROVEMENT AREA DISTRICT OF TIMAGAMI, SAVE AND EXCEPT SUPERVISORS, FOREMEN AND SHIFT BOSSES, PERSONS ABOVE

THE RANK OF FOREMAN, SUPERVISOR AND SHIFT BOSS, PERSONNEL OFFICER, PERSONNEL CLERK, SAFETY ENGINEER, HEAD PLANT METALLURGIST, CHIEF ENGINEER-GEOLOGIST, SECRETARY TO THE MINE MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED ON A COOPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY AND PERSONS EMPLOYED IN THE PROCESS CONTROL LABORATORY." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

(APPLICANT DISMISSED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SHERMAN MINE IN THE IMPROVEMENT AREA DISTRICT OF TIMOGAMI, SAVE AND EXCEPT FOREMEN, SHIFT BOSSES, PERSONS ABOVE THE RANK OF FOREMAN AND SHIFT BOSS, OFFICE, CLERICAL AND TECHNICAL EMPLOYEES, EMPLOYEES IN THE ENGINEERING, GEOLOGICAL AND METALLURGICAL DEPARTMENTS, SECURITY GUARDS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED ON A COOPERATIVE TRAINING BASIS WITH A SCHOOL OR UNIVERSITY, EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT HEREIN." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO PARAGRAPH 15 OF ITS DECISION OF JULY 3, 1969 AND THE WRITTEN SUBMISSIONS OF THE PARTIES WITH RESPECT THERETO).

(APPLICANT CERTIFIED).

16112-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. OLIVETTI UNDERWOOD LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CUSTOMER ENGINEERING SERVICES DIVISION EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CES MANAGERS, PERSONS ABOVE THE RANK OF CES MANAGER, OFFICE AND SALES STAFF." (95 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	86
NUMBER OF PERSONS WHO CAST BALLOTS	86
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	39
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	46

16114-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CARL & DON LECLAIR LIMITED (RESPONDENT) V. TEAMSTERS, LOCAL UNION 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT MOUNT BRYDGES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (1 EMPLOYEE).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
(BALLOTS NOT COUNTED).	

(SEE INDEXED ENDORSEMENT PAGE 724).

16295-69-R: CANADIAN BUSINESS MACHINE WORKERS UNION (APPLICANT) V. THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (RESPONDENT) V. CANADIAN OFFICE WORKERS UNION No. 159 (INTERVENER).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT 222 LANSLOWNE AVENUE, TORONTO AND 15 MARMAC DRIVE, REXDALE, SAVE AND EXCEPT SUCH EMPLOYEES AS ARE HEREINAFTER EXPRESSLY EXCLUDED, NAMELY: SALES AND SERVICE EMPLOYEES, FOREMEN, SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISORS, CAFETERIA STAFF, PART-TIME EMPLOYEES, SECRETARY TO THE PRESIDENT, VICE PRESIDENT, MANUFACTURING, VICE PRESIDENT, FINANCE, STAFF ASSISTANT, INDUSTRIAL RELATIONS OFFICER, AND UP TO A MAXIMUM OF SIX EMPLOYEES IN THE PREPARATION OF FINANCIAL STATEMENTS, BUDGETS, MANAGEMENT PAYROLL AND GROUP BENEFITS, WITH THE UNDERSTANDING THAT ANY ADDITIONS ABOVE THIS NUMBER IN THESE CATEGORIES WILL BE AGREED WITH THE UNION BEFORE BEING MADE; AND EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE CANADIAN BUSINESS MACHINE WORKERS' UNION." (99 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	82
NUMBER OF PERSONS WHO CAST BALLOTS	82
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	39
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	43

16330-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ALLAN JOHNSTON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF LISTOWEL AND INGERSOL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	24
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	14

16349-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	12

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

16612-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. HARRON CONSTRUCTION LTD. (RESPONDENT). (3 EMPLOYEES).

16654-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. FOUNDATION COMPANY OF CANADA LTD. (RESPONDENT). (4 EMPLOYEES).

16663-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. E.G.M. CAPE & COMPANY LTD. (RESPONDENT). (8 EMPLOYEES).

16705-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. DURIE FUELS LIMITED (SUNOCO) (RESPONDENT). (4 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING SEPTEMBER

16197-69-R: MARGARET DONOHUE, KAREN HANSON, EDNA MELANG, AND HELEN KENNEDY (APPLICANTS) V. LOCAL 893 HOTEL, MOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (RESPONDENT) V. SINCLAIR'S RESTAURANT (ATIKOKAN) LTD. (INTERVENER) V. EMPLOYEE (OBJECTOR). (GRANTED).

UNIT: "ALL EMPLOYEES OF SINCLAIR'S RESTAURANT (ATIKOKAN) LIMITED, SAVE AND EXCEPT MANAGER AND ASSISTANT MANAGER." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	2

(SEE INDEXED ENDORSEMENT PAGE 765).

16259-69-R: CLIVE DYKER (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 (RESPONDENT). (DISMISSED).

(RE: EAST MALL, I.G.A.).

UNIT: "ALL RETAIL EMPLOYEES OF EAST MALL, I.G.A., SAVE AND EXCEPT FOR THE STORE MANAGER, ASSISTANT STORE MANAGER IN STORE WHOSE WEEKLY VOLUME IS \$15,000, OR GREATER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 (TWENTY-FOUR) HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	5
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	1

16477-69-R: MAHER SHOES LIMITED (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002 A.F. OF L. - C.I.O. (RESPONDENT) V. ELK'S DEPARTMENT STORES LIMITED (INTERVENER). (DISMISSED).

(RE: H. GRAY LIMITED).

16530-69-R: MARLAY LANGFORD (APPLICANT) V. LABORERS' UNION LOCAL 183 (RESPONDENT). (GRANTED). (3 EMPLOYEES).

(RE: DENTAL PROSTHETICS LABORATORY).

16638-69-R: THE EMPLOYEES OF CUNA (HAMILTON) CREDIT UNION LIMITED MEMBERS OF OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 290, WITH THE EXCEPTION OF THE OFFICE MANAGER, LOAN OFFICER, OFFICE SUPERVISOR, MEMBER RELATIONS OFFICER AND TORONTO BRANCH MANAGER (APPLICANT) V. OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (RESPONDENT). (DISMISSED). (6 EMPLOYEES).

(RE: CUNA (HAMILTON) CREDIT UNION LIMITED).

(SEE INDEXED ENDORSEMENT PAGE 771).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

SEPTEMBER

16629-69-U: THE ROBINSON CLAY PRODUCT CO. OF CANADA LIMITED (APPLICANT) V. INTERNATIONAL UNION OF DOLL AND TOY WORKERS' OF THE UNITED STATES AND CANADA, LOCAL 905 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

SEPTEMBER

16572-69-U: UNITED TRANSPORTATION UNION (APPLICANT) V. THE ALGOMA STEEL CORPORATION, LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 773).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

16436-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF MARKHAM AND HARRY CRISP AND DIPAN MUKHERJEE (RESPONDENTS). (WITHDRAWN).

16444-69-U: GABRIEL OF CANADA LIMITED, NELMOR CORP. (CANADA) LIMITED, VANAL MANUFACTURING COMPANY LIMITED, VAN DER HOUT ASSOCIATES LIMITED (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ITS OFFICERS, OFFICIALS AND AGENTS AND R. BUTT, J. MUIR ET AL (RESPONDENTS). (WITHDRAWN).

16465-69-U: RETAIL & FOOD EMPLOYEES' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. GREAT ATLANTIC & PACIFIC TEA COMPANY, LIMITED AND KEN ADAMS (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 778).

16582-69-U: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. KERBEL DEVELOPMENTS LIMITED, MORRIS KERBEL AND FRANCO POLERO (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 779).

16640-69-U: CANADA BUILDING MATERIALS LIMITED (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16641-69-U: PREMIER CONCRETE PRODUCTS, DIVISION OF LAKE ONTARIO CEMENT LIMITED SUCCESSOR TO PREMIER BUILDING MATERIALS (DIVISION OF LAKE ONTARIO CEMENT LIMITED) (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16642-69-U: DUFFERIN MATERIALS & CONSTRUCTION LTD. (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16643-69-U: MCCORD & COMPANY, A DIVISION OF S.P. & M. MATERIALS LIMITED SUCCESSOR TO S. MCCORD & CO. LTD. (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16644-69-U: COMMUNITY BUILDING SUPPLIES LIMITED (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16645-69-U: TESKEY READY MIX LIMITED (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16646-69-U: RICHVALE REDI-MIX LIMITED (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16647-69-U: KILMER VAN NOSTRAND Co. LIMITED (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (GRANTED).

16653-69-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PATTERSON PLATING LIMITED (RESPONDENT). (WITHDRAWN).

16672-69-U: CUSTON CONCRETE LIMITED (APPLICANT) V. GEORGE BEARDWOOD ET AL (RESPONDENTS). (WITHDRAWN).

16748-69-U: PEEL STEEL NORTHERN LTD. (APPLICANT) V. GERRY "SPUD" HAUGHEY (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF
DURING SEPTEMBER

15837-68-U: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, LOCAL 538 (COMPLAINANT) V. WEBSTER & HORSFALL (CANADA) LTD. AND JOHN S. GRANT (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 780).

16383-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. HOME JUICE Co. (DIVISION OF JAY ZEE FOOD PRODUCTS LTD.) (RESPONDENT). (DISMISSED).

- AND -

16397-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. HOME JUICE Co. (DIVISION OF JAY ZEE FOOD PRODUCTS LTD.) (RESPONDENT). (DISMISSED).

- AND -

16404-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. HOME JUICE Co. (DIVISION OF JAY ZEE FOOD PRODUCTS LTD.) (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 787).

16447-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. THE CORPORATION OF THE TOWNSHIP OF MARKHAM AND DIPAN MUKHERJEE (RESPONDENT). (WITHDRAWN).

- AND -

16565-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. THE CORPORATION OF THE TOWNSHIP OF MARKHAM AND DIPAN MUKHERJEE (RESPONDENT). (WITHDRAWN).

16484-69-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. P. OUIMET & SON CONSTRUCTION (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 789).

16536-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. NORMAN WIENGARTEN CARRYING ON THE BUSINESS AS SHOPPERS DRUG MART (LONDON) (RESPONDENT). (WITHDRAWN).

16549-69-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. THE FALK CORPORATION OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

16551-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (COMPLAINANT) V. ZELLER'S LIMITED (RESPONDENT). (WITHDRAWN).

16564-69-U: UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (COMPLAINANT) V. LONDON BOTTLING CO. LTD. (RESPONDENT). (WITHDRAWN).

16571-69-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK & DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. LONDON BOTTLING CO. LTD. (RESPONDENT). (WITHDRAWN).

16656-69-U: SUDBURY TYPOGRAPHICAL UNION No. 846 (I.T.U. (COMPLAINANT) V. TEMISKAMING PRINTING COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

16692-69-U: THE CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SECURITY FREIGHTWAYS LIMITED (RESPONDENT). (WITHDRAWN).

16693-69-U: THE CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SECURITY FREIGHTWAYS LIMITED (RESPONDENT). (WITHDRAWN).

16700-69-U: THE CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SECURITY FREIGHTWAYS LIMITED (RESPONDENT). (WITHDRAWN).

- AND -

16701-69-U: THE CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. SECURITY FREIGHTWAYS LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

16611-69-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (TRADE UNION) AND NORTH YORK GENERAL HOSPITAL (EMPLOYER). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING SEPTEMBER

15640-68-M: THE ESSEX COUNTY BOARD OF EDUCATION (APPLICANT) V. LEAMINGTON-KINGSVILLE DISTRICT HIGH SCHOOL BOARD; NORTH ESSEX DISTRICT HIGH SCHOOL BOARD; ESSEX DISTRICT HIGH SCHOOL BOARD; LEAMINGTON PUBLIC

SCHOOL BOARD; BOARD OF TRUSTEES OF THE HARROW DISTRICT HIGH SCHOOL; AMHERSTBURG DISTRICT HIGH SCHOOL BOARD; BOARD OF PUBLIC SCHOOL TRUSTEES OF THE TOWNSHIP SCHOOL AREA OF SANDWICH SOUTH; BOARD OF PUBLIC SCHOOL TRUSTEES OF THE TOWNSHIP SCHOOL AREA OF SANDWICH WEST; THE PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF HARROW AND COLCHESTER SOUTH TOWNSHIP; CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 528; CANADIAN UNION OF PUBLIC EMPLOYEES; BUILDING SERVICE EMPLOYEES UNION, LOCAL 210 (RESPONDENTS).

UNIT: "ALL EMPLOYEES OF THE APPLICANT IN THE COUNTY OF ESSEX ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS SAVE AND EXCEPT OFFICE STAFF, SUPERVISORS, FOREMEN AND PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		86
NUMBER OF PERSONS WHO CAST BALLOTS	89	
BALLOTS SEGREGATED AND NOT COUNTED	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT, CANADIAN UNION OF PUBLIC EMPLOYEES	80	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT, CANADIAN UNION OF PUBLIC EMPLOYEES	2	

15841-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE KENT COUNTY BOARD OF EDUCATION (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, SCHOOL NURSES AND SCHOOL CROSSING GUARDS."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		116
NUMBER OF PERSONS WHO CAST BALLOTS	114	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	97	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	16	

16068-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE NORTH BAY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT MAINTENANCE SUPERVISORS AND HEAD CARETAKERS, PERSONS ABOVE THE RANK OF SUPERVISOR AND HEAD CARETAKER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		74
NUMBER OF PERSONS WHO CAST BALLOTS	74	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	62	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12	

16145-69-M: THE WELLAND COUNTY BOARD OF EDUCATION (APPLICANT) V.
CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCALS 468, 524 AND 152
(RESPONDENTS) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE,
SERVICE AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN AND SUPER-
VISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE
STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS
PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		249
NUMBER OF PERSONS WHO CAST BALLOTS	211	
NUMBER OF SPOILED BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT C.U.P.E. LOCAL 524	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT C.U.P.E. LOCAL 468	207	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT C.U.P.E. LOCAL 152	0	

UNIT #2: "ALL OFFICE EMPLOYEES OF THE APPLICANT, SAVE AND EXCEPT
OFFICE MANAGER, BUSINESS ADMINISTRATOR, PERSONS ABOVE THE RANK OF
OFFICE MANAGER AND BUSINESS ADMINISTRATOR, PURCHASING AGENT,
SECRETARY TO THE OFFICE MANAGER AND SECRETARY TO THE BUSINESS
ADMINISTRATOR."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		171
NUMBER OF PERSONS WHO CAST BALLOTS	119	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 524	52	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 524	66	

REFERENCE TO BOARD PURSUANT TO SECTION 79A

16462-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION LOCAL 1002, A.F.L.:C.I.O.:C.L.C. (TRADE UNION) AND GRAYS DEPARTMENT STORE LIMITED (FORMERLY: H. GRAY LIMITED) (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 790).

16558-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002 A.F. OF L. - C.I.O. (TRADE UNION) AND ELKS DEPARTMENT STORE LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 793).

16559-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002 A.F. OF L. - C.I.O. (TRADE UNION) AND MAHER SHOES LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 793).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

16292-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 794).

16293-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 794).

16647-69-U: KILMER VAN NOSTRAND CO. LIMITED (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 799).

15289-68-U: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. MURRAY BROS. LUMBER Co. LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 800).

INDEXED ENDORSEMENTS - CERTIFICATION

15776-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HASTINGS COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD (MR. H. F. IRWIN DISSENTING IN PART):
SEPTEMBER 3, 1969.

. . .

2. THE RESPONDENT IS THE RESULT OF THE STATUTORY AMALGAMATION OF A NUMBER OF SCHOOL BOARDS, PURSUANT TO THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT, S.O. 1968, c. 122. ONE OF THE PRE-EXISTING SCHOOL BOARDS WAS THE BOARD OF EDUCATION FOR THE TOWN OF TRENTON WHICH HAD A PURPORTED COLLECTIVE AGREEMENT WITH THE ASSOCIATION OF THE NON-TEACHING EMPLOYEES OF THE BOARD OF EDUCATION. THAT ASSOCIATION DID NOT APPEAR AT THE HEARING ALTHOUGH DULY NOTIFIED, AND SUBSEQUENTLY ADVISED THE BOARD IN WRITING THAT IT DID NOT OPPOSE OR WISH TO OPPOSE THIS APPLICATION. ACCORDINGLY, WE DECLARE THAT THE ASSOCIATION OF NON-TEACHING EMPLOYEES OF THE BOARD OF EDUCATION HAS ABANDONED ANY BARGAINING RIGHTS WHICH IT MAY HAVE HELD.

3. THE APPLICANT FURTHER ADVISED THAT IT FORMERLY HELD BARGAINING RIGHTS AT BELLEVILLE AND THURLOW, PURSUANT TO CERTIFICATES ISSUED BY THIS BOARD AND FURTHER ADVISED THE BOARD THAT IT WAS ABANDONING THOSE BARGAINING RIGHTS. ACCORDINGLY, WE DECLARE THAT THE APPLICANT HAS ABANDONED THE BARGAINING RIGHTS HELD PURSUANT TO CERTIFICATE NUMBERS 14773-68-R DATED 12TH JULY 1968, CANADIAN UNION OF PUBLIC EMPLOYEES V. PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF THURLOW AND 12159-66-R, CANADIAN UNION OF PUBLIC EMPLOYEES V. THE BELLEVILLE PUBLIC SCHOOL BOARD V. GROUP OF EMPLOYEES.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HASTINGS COUNTY ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT HEAD CARETAKERS AND THOSE ABOVE THE RANK OF HEAD CARETAKER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS THE FULL TIME UNIT).

5. AT THE REQUEST OF THE RESPONDENT AND FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THAT THE WORD "SERVICES" INCLUDES BOTH CAFETERIA EMPLOYEES AND BUS DRIVERS.

6. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED JUNE 19TH 1969, WE FIND THAT HEAD CARETAKERS EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

7. IT WAS FURTHER SUBMITTED THAT THERE WERE A NUMBER OF PEOPLE WHO SIGNED INDIVIDUAL CONTRACTS WHO WERE INDEPENDENT CONTRACTORS AND NOT EMPLOYEES. AN EXAMINER WAS THEN APPOINTED TO INQUIRE INTO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND PARTICULARLY INTO THE WORK RECORDS OF MR. JOSEPH LESSARD, MRS. BERNICE KENT AND MRS. RITA CONLEY. HAVING REGARD TO THE REPORT OF THE EXAMINER WITH RESPECT TO THOSE PERSONS, WE FIND THAT JOSEPH C. LESSARD IS AN INDEPENDENT CONTRACTOR WHO EMPLOYS OTHERS TO ASSIST IN MAINTAINING THE SCHOOL AND ACCORDINGLY, WE FIND THAT HE IS AN INDEPENDENT CONTRACTOR AND IS NOT INCLUDED IN THE BARGAINING UNIT.

8. THE CONTRACT BETWEEN THE RESPONDENT AND MRS. BERNICE KENT CONTAINS THE FOLLOWING PROVISIONS, INTER ALIA:

"THE BOARD AGREES TO EMPLOY MRS. B. KENT AS A CARETAKER - - - AT A SALARY OF \$90.00 PER MONTH."

"THE CARETAKER WILL PERFORM ALL OTHER DUTIES NEEDED TO CARE FOR THE SCHOOL PROPERTY UNDER THE DIRECTION OF THE PRINCIPAL AND THE HASTINGS COUNTY BOARD OF EDUCATION SUPERVISOR."

IN ADDITION, THERE ARE DEDUCTIONS MADE FROM MRS. KENT'S SALARY FOR THE CANADA PENSION PLAN. HAVING REGARD TO THE EVIDENCE WE CONCLUDE THAT MRS. BERNICE KENT IS NOT AN INDEPENDENT CONTRACTOR AND IS AN EMPLOYEE, AND THEREFORE INCLUDED IN THE BARGAINING UNIT.

9. THERE ARE NO RECORDS AVAILABLE FOR MRS. RITA CONLEY. HOWEVER, WE NOTE THAT THE BOARD HAS MADE DEDUCTIONS WITH RESPECT TO BOTH CANADA PENSION PLAN AND INCOME TAX. WE CONCLUDE FROM THE EVIDENCE WITH RESPECT TO MRS. RITA CONLEY THAT SHE IS NOT EMPLOYED AS AN INDEPENDENT CONTRACTOR AND IS AN EMPLOYEE AND THEREFORE INCLUDED IN THE BARGAINING UNIT.

10. IN THE CASE OF BOTH MRS. KENT AND MRS. CONLEY WHO ARE RESPONSIBLE FOR MAINTAINING AND CLEANING TWO SCHOOLS, WE ARE NOT PREPARED TO ASSUME THAT BECAUSE THERE ARE NO SCHEDULED HOURS OF WORK AND NO ALLOWANCES FOR STATUTORY HOLIDAYS, VACATIONS, MEDICAL OR SICK BENEFITS, THAT THOSE PERSONS ARE INDEPENDENT CONTRACTORS.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE FULL TIME UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 13TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE FULL TIME UNIT.

13. HAVING REGARD TO THE RESPONDENT'S REQUEST TO EXCLUDE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, WE FIND THAT ALL EMPLOYEES OF THE RESPONDENT AT HASTINGS COUNTY REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT HEAD CARETAKERS, PERSONS ABOVE THE RANK OF HEAD CARETAKER AND OFFICE STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS THE PART TIME UNIT).

14. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE PART TIME UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE PART TIME UNIT ON THE DATE HEREOF, WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

15. VOTERS IN THE PART TIME UNIT WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

DISSENT OF BOARD MEMBER H. F. IRWIN: SEPTEMBER 3, 1969.

1. I DISSENT FROM THE DECISION OF THE BOARD IN RESPECT OF INCLUDING MRS. BERNICE KENT AND MRS. RITA CONLEY IN THE BARGAINING UNIT. ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER I WOULD CLASSIFY THESE TWO PERSONS AS INDEPENDENT CONTRACTORS.

2. MRS. BERNICE KENT IS RESPONSIBLE FOR THE MAINTENANCE AND CLEANING OF SHANNONVILLE SCHOOL. SHE SIGNED A CARETAKER'S CONTRACT DATED DECEMBER 20TH, 1968 AND TO BE EFFECTIVE FROM JANUARY 1ST, 1969 TO AUGUST, 1969 AT A SALARY OF \$90.00 PER MONTH. HER HUSBAND HELPS

HER AT THE SCHOOL. DEDUCTIONS HAVE BEEN MADE FOR CANADA PENSION PLAN ONLY. THE HASTINGS COUNTY BOARD OF EDUCATION HAS MADE THE CONTRIBUTIONS TO THE CANADA PENSION PLAN ON HER BEHALF. THE SAME ARRANGEMENT HAS BEEN IN EFFECT FOR APPROXIMATELY 3 YEARS. (SEE PARAGRAPH 37, EXAMINER'S REPORT).

3. MRS. RITA CONLEY IS RESPONSIBLE FOR THE CLEANING AND MAINTENANCE OF TYENDINGAGA PUBLIC SCHOOL AT AN AGREED RATE OF \$3500.00 PER YEAR. SHE HAS NOT BEEN CLASSED AS AN EMPLOYEE BY EITHER THE PREVIOUS OR THE PRESENT BOARD OF EDUCATION. THE PRESENT BOARD HAS DEDUCTED CANADA PENSION PLAN AND INCOME TAX FROM THE MONIES DUE HER AND HAS MADE THE CANADA PENSION PLAN CONTRIBUTION AS DID THE PREVIOUS BOARD. HER HUSBAND HELPS HER AT THE SCHOOL. (SEE PARAGRAPH 38 OF EXAMINER'S REPORT).

4. ON THE ABOVE EVIDENCE, I AM IMPELLED TO FIND THAT MRS. KENT AND MRS. CONLEY ARE INDEPENDENT CONTRACTORS AND ARE NOT EMPLOYEES OF THE BOARD FOR THE PURPOSES OF THE LABOUR RELATIONS ACT AND I WOULD HAVE EXCLUDED THEM FROM THE BARGAINING UNIT.

16034-69-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL CIO CLC (APPLICANT) v. CANADYLET CLOSURES DIVISION OF THE INTERNATIONAL SILVER COMPANY OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. A. MACLEAN, L. COLLINS AND K. OLDHAM FOR THE APPLICANT, G. W. HATELY FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: SEPTEMBER 18, 1969.

. . .

2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT BARRIE WITH CERTAIN EXCEPTIONS WHICH ARE NOT MATERIAL FOR PURPOSES OF THIS DECISION.

3. AT THE ORIGINAL HEARING OF THE APPLICATION, COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE APPLICANT COULD NOT TAKE THE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION INTO MEMBERSHIP BECAUSE OF THE NATURE OF THE RESPONDENT'S BUSINESS AND THE LIMITATIONS CONTAINED IN THE CONSTITUTION OF THE APPLICANT.

4. THE RESPONDENT IS IN THE BUSINESS OF MANUFACTURING, PROCESSING AND ASSEMBLING COSMETIC CONTAINERS. ARTICLE VII ENTITLED "MEMBERSHIP", SECTION 1 - "ELIGIBILITY" READS IN PART:

(A) ONLY WORKERS ACTIVELY EMPLOYED IN THE RUBBER, CORK, LINOLEUM, PLASTIC AND ALLIED PRODUCTS INDUSTRIES SHALL BE ELIGIBLE TO APPLY FOR MEMBERSHIP IN THE URW.

COUNSEL FOR THE APPLICANT MAINTAINS THAT THE OPERATIONS OF THE RESPONDENT FALL WITHIN THE WORDS "ALLIED PRODUCTS INDUSTRIES". COUNSEL FOR THE RESPONDENT ON THE OTHER HAND ASSERTS THAT THE RESPONDENT'S BUSINESS IS NOT A BUSINESS ALLIED TO THAT OF RUBBER, CORK, LINOLEUM OR PLASTIC. THE PARTIES AT THE HEARING WERE IN SHARP DISAGREEMENT AS TO THE NATURE OF THE RESPONDENT'S OPERATIONS. THE BOARD ACCORDINGLY APPOINTED AN EXAMINER INTER ALIA TO INQUIRE INTO AND REPORT ON THE NATURE OF THE WORK BEING PERFORMED BY THE EMPLOYEES OF THE RESPONDENT. COUNSEL FOR THE APPLICANT AT THE ORIGINAL HEARING ADVISED THE BOARD THAT HE WAS PREPARED TO CALL EVIDENCE RELATING TO THE PRACTICE OF THE APPLICANT AS TO THE TYPE OF EMPLOYEES WHICH IT ACCEPTS INTO MEMBERSHIP AND THE INTERPRETATION PLACED ON SECTION 1 OF ARTICLE VII OF ITS CONSTITUTION BY THE APPLICANT.

5. FOLLOWING THE RELEASE OF THE INTERIM REPORT OF THE EXAMINER DATED JULY 21, 1969, WHICH DEALT SOLELY WITH THE NATURE OF THE WORK BEING PERFORMED BY THE RESPONDENT, THE BOARD LISTED THE MATTER FOR HEARING FOR THE PURPOSE OF ENTERTAINING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT AND TO PERMIT EVIDENCE RELATING TO ELIGIBILITY FOR MEMBERSHIP TO BE ADDUCED BY THE APPLICANT.

6. AT THE OUTSET OF THE SECOND HEARING COUNSEL FOR THE RESPONDENT SUBMITTED THAT THE APPLICANT SHOULD NOT BE PERMITTED TO ADDUCE EXTRINSIC EVIDENCE AS TO THE APPLICANT'S PAST PRACTICE RELATING TO ELIGIBILITY FOR MEMBERSHIP AND THE INTERPRETATION PLACED ON THE MEMBERSHIP PROVISIONS OF THE APPLICANT'S CONSTITUTION BY SENIOR RESPONSIBLE OFFICERS. THE GROUND UPON WHICH HE BASED HIS OBJECTION WAS THAT ON THE APPEAL TO THE ONTARIO HIGH COURT OF THE BOARD'S DECISION IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, OLRB M.R. AUG. 1967, P. 437, WHICH AFFIRMS THE BOARD'S POLICY OF CONSIDERING SUCH EVIDENCE, FRASER J. IN HIS JUDGMENT EXPRESSED THE VIEW THAT THE BOARD ERRED IN LAW IN THIS RESPECT (R V OLRB EX PARTE METROPOLITAN LIFE INSURANCE COMPANY, 68 CLLC P. 11,523). COUNSEL FOR THE RESPONDENT FURTHER SUBMITTED THAT THE JUDGMENT OF LASKIN J.A. IN THE ONTARIO COURT OF

APPEAL (R v OLRB EXPARTE METROPOLITAN LIFE INSURANCE COMPANY, 68 CLLC P. 11,745) SUPPORTS THE POSITION OF FRASER J. ON THAT POINT. COUNSEL ARGUES THAT IN THE FACE OF THE VIEWS EXPRESSED BY THE COURTS THE BOARD SHOULD REFRAIN FROM ACCEPTING ANY EXTRINSIC EVIDENCE RELATING TO ELIGIBILITY FOR MEMBERSHIP IN THE APPLICANT.

7. THE BOARD AT THE HEARING NOTED THAT THE OPINION OF FRASER J. WAS OBITER DICTA. MORE IMPORTANTLY MR. JUSTICE FRASER MAKES IT EXPLICITLY CLEAR THAT THE CONSIDERATIONS AND EVIDENCE WHICH THE BOARD TOOK INTO ACCOUNT IN DETERMINING THE ELIGIBILITY FOR MEMBERSHIP OF PERSONS IN A TRADE UNION WERE MATTERS WITHIN THE BOARD'S EXCLUSIVE JURISDICTION AND THE PRIVATIVE PROVISION OF SECTION 80 PREVENTED ANY REVIEW OF THE ERROR ON CERTIORARI. THE JUDGMENT OF LASKIN J.A. SUPPORTS THAT OF FRASER J. WITH RESPECT TO THE EXCLUSIVE JURISDICTION OF THE BOARD. THERE IS, HOWEVER, NO STATEMENT IN THE JUDGMENT OF LASKIN J.A. THAT CAN BE INTERPRETED AS APPROVAL OF THE OPINION OFFERED BY FRASER J. THAT THE BOARD ERRED IN LAW. THE BOARD RULED THAT IT PROPOSED TO ADHERE TO ITS LONG STANDING POLICY AND PERMITTED THE APPLICANT TO ADDUCE EVIDENCE RELATING TO THE ISSUE OF ELIGIBILITY FOR MEMBERSHIP IN THE APPLICANT.

8. THE EVIDENCE ADDUCED BY THE APPLICANT IS THAT IT HAS ACCORDED FULL MEMBERSHIP RIGHTS AND PRIVILEGES TO PERSONS ENGAGED IN SUCH DIVERSE FIELDS AS THE MANUFACTURING AND PRODUCTION OF CHEMICALS, PORCELAIN ENAMEL, GLASS, AND TEXTILES, NONE OF WHICH PRODUCTS ARE IN ANY WAY RELATED TO RUBBER, CORK, LINOLEUM OR PLASTICS. THE APPLICANT HAS ALSO TAKEN INTO MEMBERSHIP PERSONS ENGAGED IN PRODUCTS SUCH AS THOSE MANUFACTURED BY THE PRESENT RESPONDENT WHICH COMBINE METAL AND PLASTIC. THE APPLICANT HAS EVEN TAKEN OFFICE WORKERS INTO MEMBERSHIP. ACCORDING TO THE EVIDENCE, IN NO INSTANCE HAS MEMBERSHIP BEEN REFUSED TO ANY PERSONS IN THESE INDUSTRIES. KENNETH OLDHAM, AN INTERNATIONAL VICE-PRESIDENT OF THE APPLICANT, TESTIFIED THAT THE UNION HAS CONSISTENTLY PLACED A VERY BROAD OR LIBERAL INTERPRETATION ON THE WORDS "ALLIED PRODUCTS INDUSTRIES" WHICH HAS ENABLED IT TO TAKE INTO MEMBERSHIP THE PERSONS ENGAGED IN THE OPERATIONS REFERRED TO ABOVE.

9. IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE (SUPRA) THE BOARD SUMMARIZED ITS POLICY WITH RESPECT TO ELIGIBILITY FOR MEMBERSHIP IN A TRADE UNION IN THE FOLLOWING TERMS AT P. 442:

IN SUM, THEN, IN DETERMINING WHETHER AN APPLICANT TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN AN APPROPRIATE BARGAINING UNIT, WHAT THE BOARD IS CONCERNED WITH IS WHETHER THE UNION ACCORDS ALL SUCH EMPLOYEES FULL RIGHTS

AND PRIVILEGES AS MEMBERS. IF THE EVIDENCE SUPPORTS THIS CONCLUSION, THEN THE BOARD IS PREPARED TO FIND THAT SUCH EMPLOYEES ARE ELIGIBLE TO BECOME MEMBERS (AND, DEPENDING ON THE EVIDENCE, THAT THEY ARE MEMBERS) FOR THE PURPOSES OF SECTION 7 OF THE ACT AND, FURTHER, THAT THE TRADE UNION IS CAPABLE OF REPRESENTING ALL THE EMPLOYEES IN THE UNIT.

10. IN THE INSTANT CASE, THE BOARD IS FULLY SATISFIED THAT THE APPLICANT ACCORDS FULL RIGHTS AND PRIVILEGES TO THE TYPE OF EMPLOYEES EMPLOYED BY THE RESPONDENT AND THEREFORE IS CAPABLE OF REPRESENTING ALL OF THE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION.

11. IN LIGHT OF THE ABOVE FINDING, IT IS NOT NECESSARY FOR THE BOARD TO MAKE A DETERMINATION AS TO WHETHER THE OPERATIONS OF THE RESPONDENT FALL WITHIN THE LANGUAGE OF "ALLIED PRODUCTS INDUSTRIES" IN SECTION 1 OF ARTICLE VII OF THE APPLICANT'S CONSTITUTION. BASED ON THE EVIDENCE CONTAINED IN THE INTERIM REPORT OF THE EXAMINER, HOWEVER, WE ARE OF THE OPINION THAT THE RESPONDENT'S BUSINESS DOES FALL WITHIN THE PURVIEW OF THAT PHRASE.

12. IN ITS DECISION OF MAY 6, 1969, IN ADDITION TO AUTHORIZING MR. W. G. JACKSON, EXAMINER, TO INQUIRE INTO AND REPORT ON THE NATURE OF THE WORK BEING PERFORMED BY THE EMPLOYEES OF THE RESPONDENT, THE BOARD ALSO AUTHORIZED HIM TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY THE DUTIES AND RESPONSIBILITIES OF CERTAIN NAMED PERSONS.

13. THE BOARD ACCORDINGLY DIRECTS THAT THE EXAMINER PROCEED WITH HIS INQUIRY AND REPORT ON THE REMAINING OUTSTANDING MATTERS FALLING WITHIN THE SCOPE OF HIS AUTHORIZATION.

16114-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. CARL & DON LECLAIR LIMITED (RESPONDENT) v. TEAMSTERS, LOCAL UNION 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 4, 1969.

1. ON APRIL 29TH, 1969, THE APPLICANT APPLIED FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT AT MOUNT BRYDGES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. THE INTERVENER HOLDS THE BARGAINING RIGHTS FOR THE ABOVE DESCRIBED UNIT.

2. BY A DECISION DATED MAY 23RD, 1969, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE IN A VOTING CONSTITUENCY ENCOMPASSING THE UNIT OF EMPLOYEES REPRESENTED BY THE INTERVENER. THE ELIGIBLE VOTERS WERE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

3. THE REPRESENTATION VOTE WAS TAKEN ON JULY 3RD, 1969. THE REPRESENTATIVE OF THE INTERVENER AT THE VOTE, HOWEVER, CHALLENGED THE ELIGIBILITY OF JAMES HANDY, WHOSE NAME APPEARED ON THE VOTERS' LIST, TO CAST A BALLOT. IN VIEW OF THE FACT THAT THERE WERE ONLY TWO PERSONS ON THE VOTERS' LIST, THE RETURNING OFFICER SEGREGATED BOTH BALLOTS WHICH REMAIN ON FILE PENDING A DISPOSITION BY THE BOARD OF THE CHALLENGE MADE BY THE INTERVENER.

4. ON JULY 11TH, 1969, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT ON THE EMPLOYMENT STATUS OF JAMES HANDY. THE BOARD HAS NOW CONSIDERED THE REPORT OF THE EXAMINER DATED AUGUST 14TH, 1969, AND THE WRITTEN REPRESENTATIONS OF THE APPLICANT AND THE INTERVENER WITH RESPECT TO THE REPORT.

5. THE RESPONDENT FILED WITH ITS REPLY A LIST WHICH CONTAINED THE NAMES OF TWO PERSONS ON SCHEDULE A, NAMELY, ROBERT MOORE AND JAMES HANDY. THE BOARD THEREFORE AUTOMATICALLY ASSUMED THAT THERE WERE TWO EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE INTERVENER AT MOUNT BRYDGES, WHICH IS THE VOTING CONSTITUENCY ESTABLISHED BY THE BOARD. THE REPORT OF THE EXAMINER, HOWEVER, REVEALS THAT ON THE DATE OF THE MAKING OF THE APPLICATION AND DURING THE MONTH IMMEDIATELY PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION, HANDY WAS WORKING OUT OF THE RESPONDENT'S TERMINAL AT WINDSOR. IN OTHER WORDS HANDY WAS NOT AN EMPLOYEE IN THE BARGAINING UNIT DURING THIS PERIOD.

6. THE POLICY OF THE BOARD IS THAT IF AN EMPLOYEE IS ABSENT FROM WORK ON THE DATE OF THE MAKING OF AN APPLICATION FOR CERTIFICATION AND HAS NOT BEEN AT WORK FOR A PERIOD OF A MONTH PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION OR IS NOT EXPECTED BACK TO WORK FOR MORE THAN A MONTH AFTER THE DATE OF THE MAKING OF THE APPLICATION, THAT EMPLOYEE IS NOT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT.

(SEE COLUMBUS MCKINNON CASE OLRB M.R. JULY 1962 132 AND PEJAY PACKING CASE OLRB M.R. AUG. 1963 275) BY ANALOGY THE SAME POLICY IS APPLICABLE WHEN AN EMPLOYEE WAS NOT IN THE BARGAINING UNIT ON THE DAY OF APPLICATION AND HAD NOT BEEN AN EMPLOYEE IN THE UNIT FOR A MONTH PRIOR TO THE MAKING OF THE APPLICATION AND FOR MORE THAN A MONTH AFTER THE DATE OF THE MAKING OF THE APPLICATION.

7. IN THE INSTANT CASE JAMES HANDY, SINCE HE WAS WORKING IN WINDSOR ON THE DATE OF APPLICATION AND DURING THE PRECEDING MONTH, HE CANNOT BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. ACCORDINGLY, AT THE RELEVANT TIMES THERE WAS ONLY ONE EMPLOYEE IN THE UNIT, NAMELY, ROBERT MOORE. SECTION 6(1) OF THE ACT PROVIDES THAT IN EVERY CASE, A BARGAINING UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE. SINCE THIS REQUIREMENT, AS IT TURNS OUT, WAS NOT MET, THE REPRESENTATION VOTE SHOULD NOT HAVE BEEN DIRECTED BUT RATHER THE APPLICATION SHOULD HAVE BEEN DISMISSED.

8. ACCORDINGLY, IN LIGHT OF THE INFORMATION NOW BEFORE US THE BOARD DIRECTS THE TWO SEGREGATED BALLOTS CAST IN THE REPRESENTATION VOTE NOT BE COUNTED, AND THAT THE REGISTRAR CAUSE THE BALLOTS TO BE DESTROYED.

9. THE APPLICATION IS DISMISSED.

16125-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: L. V. PATHE AND DENIS SEXTON FOR THE APPLICANT; MICHAEL GORDON AND G. L. CASSADAY FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
J. E. C. ROBINSON: SEPTEMBER 22, 1969.

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2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT PERSONS CLASSIFIED AS MEAT DEPARTMENT HEADS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3) (B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

3. THE BOARD FURTHER FINDS THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WELLAND, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 8, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER O. HODGES: SEPTEMBER 22, 1969.

I DISSENT.

LOCAL 633 REPRESENTS MEAT DEPARTMENT EMPLOYEES AS A CRAFT UNION, SEPARATE AND APART FROM OTHER EMPLOYEES REPRESENTED BY THE "ALL EMPLOYEE" UNIT FOR WHICH LOCAL UNION 175 IS CERTIFIED.

MANAGEMENT FUNCTIONS THAT WOULD CAUSE PERSONS TO BE EXCLUDED FROM AN "ALL EMPLOYEE" UNIT UNDER THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT WOULD NOT NECESSARILY CAUSE PERSONS TO BE EXCLUDED FROM A CRAFT UNIT. WORKING FOREMEN IN THE PRINTING INDUSTRY MAY BE INCLUDED BY THE BOARD IN CRAFT UNITS. THE PRACTICE IN THE CONSTRUCTION INDUSTRY OF INCLUDING WORKING FOREMEN IN THEIR CRAFT BARGAINING UNITS IS WELL KNOWN.

THE SUPERVISION EXERCISED OVER THE MEAT DEPARTMENT BY THE MANAGEMENT OF THE STORE, WHEREIN THE MEAT DEPARTMENT IS LOCATED, IS SUFFICIENT IN MY VIEW TO MAKE THE INCLUSION OF MEAT DEPARTMENT HEADS IN THE CRAFT UNIT APPLIED FOR POSSIBLE, WITHOUT INTERFERENCE IN THE CONDUCT OF THE BUSINESS OR THE DIRECTION OF THE WORKING FORCE.

I FIND, THEREFORE, THAT MEAT DEPARTMENT HEADS SHOULD BE INCLUDED IN THE CRAFT BARGAINING UNIT APPLIED FOR BY THE APPLICANT, LOCAL UNION 633.

16127-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L. V. PATHE, DENIS SEXTON, FOR THE APPLICANT; MICHAEL GORDON, FRANK BRIDGE FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: SEPTEMBER 25, 1969.

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2. THE BOARD HAS CONSIDERED ALL OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JULY 15TH 1969 AND THE ORAL REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE DUTIES AND RESPONSIBILITIES OF DANIEL ILLES, CLASSIFIED BY THE RESPONDENT AS MEAT DEPARTMENT HEAD.

3. WHILE SOME OF THE FUNCTIONS NORMALLY ATTRIBUTED TO MEMBERS OF MANAGEMENT HAVE NOT BEEN EXERCISED BY MR. ILLES, IT IS QUITE CLEAR FROM THE EVIDENCE THAT HE HAS THE EFFECTIVE CONTROL OF THE MEAT DEPARTMENT WHICH IS OPERATED SEPARATELY WITHIN THE STORE, AND EXERCISES INDEPENDENT DISCRETION IN RELATION TO ITS BUSINESS OPERATIONS. HE IS RESPONSIBLE FOR ITS GROSS PROFIT AND MAY EXERCISE HIS DISCRETION IN REDUCING THE VALUE OF MEATS. IN HIS CAPACITY TO SUPERVISE SIX EMPLOYEES, HE CAN AND HAS MADE RECOMMENDATIONS RELATING TO THEIR EMPLOYMENT; HAS REPRIMANDED EMPLOYEES; GRANTED CASUAL TIME OFF AND HAS REPORTED ON THEIR PROGRESS FROM TIME TO TIME. ALTHOUGH HE PERFORMS MANUAL WORK HE STATED THAT AT NO TIME DOES HE CEASE TO BE RESPONSIBLE FOR THE EMPLOYEES IN HIS DEPARTMENT.

4. HAVING REGARD TO THE EVIDENCE BEFORE US WE FIND THAT THE MEAT DEPARTMENT HEAD DOES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS THEREFORE NOT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD THEREFORE FINDS THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT PORT COLBORNE, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 9TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER O. HODGES: SEPTEMBER 25, 1969.

I DISSENT.

LOCAL 633 REPRESENTS MEAT DEPARTMENT EMPLOYEES AS A CRAFT UNION, SEPARATE AND APART FROM OTHER EMPLOYEES REPRESENTED BY THE "ALL EMPLOYEE" UNIT FOR WHICH LOCAL UNION 175 IS CERTIFIED.

MANAGEMENT FUNCTIONS THAT WOULD CAUSE PERSONS TO BE EXCLUDED FROM AN "ALL EMPLOYEE" UNIT UNDER THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT WOULD NOT NECESSARILY CAUSE PERSONS TO BE EXCLUDED FROM A CRAFT UNIT. WORKING FOREMEN IN THE PRINTING INDUSTRY MAY BE INCLUDED BY THE BOARD IN CRAFT UNITS. THE PRACTICE IN THE CONSTRUCTION INDUSTRY OF INCLUDING WORKING FOREMEN IN THEIR CRAFT BARGAINING UNITS IS WELL KNOWN.

THE SUPERVISION EXERCISED OVER THE MEAT DEPARTMENT BY THE MANAGEMENT OF THE STORE, WHEREIN THE MEAT DEPARTMENT IS LOCATED, IS SUFFICIENT IN MY VIEW TO MAKE THE INCLUSION OF MEAT DEPARTMENT HEADS IN THE CRAFT UNIT APPLIED FOR POSSIBLE, WITHOUT INTERFERENCE IN THE CONDUCT OF THE BUSINESS OR THE DIRECTION OF THE WORKING FORCE.

I FIND, THEREFORE, THAT MEAT DEPARTMENT HEADS SHOULD BE INCLUDED IN THE CRAFT BARGAINING UNIT APPLIED FOR BY THE APPLICANT, LOCAL UNION 633.

16128-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L. V. PATHE, DENIS SEXTON, FOR THE
APPLICANT; MICHAEL GORDON, FRANK BRIDGE FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: SEPTEMBER 25, 1969.

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2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED 15TH JULY 1969 AND THE REPRESENTATIONS OF THE PARTIES AT THE HEARING OF THE BOARD TO CONSIDER THE REPORT, THE BOARD FINDS THAT THE MEAT DEPARTMENT HEAD DOES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS EXCLUDED THEREFORE FROM THE BARGAINING UNIT.

3. THE BOARD FURTHER FINDS THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNNVILLE, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THAT RANK, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND SCHOOL VACATION PERIODS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 9TH, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER O. HODGES: SEPTEMBER 25, 1969.

I DISSENT.

LOCAL 633 REPRESENTS MEAT DEPARTMENT EMPLOYEES AS A CRAFT UNION, SEPARATE AND APART FROM OTHER EMPLOYEES REPRESENTED BY THE "ALL EMPLOYEE" UNIT FOR WHICH LOCAL UNION 175 IS CERTIFIED.

MANAGEMENT FUNCTIONS THAT WOULD CAUSE PERSONS TO BE EXCLUDED FROM AN "ALL EMPLOYEE" UNIT UNDER THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT WOULD NOT NECESSARILY CAUSE PERSONS TO BE EXCLUDED FROM A CRAFT UNIT. WORKING FOREMEN IN THE PRINTING INDUSTRY MAY BE INCLUDED BY THE BOARD IN CRAFT UNITS. THE PRACTICE IN THE CONSTRUCTION INDUSTRY OF INCLUDING WORKING FOREMEN IN THEIR CRAFT BARGAINING UNITS IS WELL KNOWN.

THE SUPERVISION EXERCISED OVER THE MEAT DEPARTMENT BY THE MANAGEMENT OF THE STORE, WHEREIN THE MEAT DEPARTMENT IS LOCATED, IS SUFFICIENT IN MY VIEW TO MAKE THE INCLUSION OF MEAT DEPARTMENT HEADS IN THE CRAFT UNIT APPLIED FOR POSSIBLE, WITHOUT INTERFERENCE IN THE CONDUCT OF THE BUSINESS OR THE DIRECTION OF THE WORKING FORCE.

I FIND, THEREFORE, THAT MEAT DEPARTMENT HEADS SHOULD BE INCLUDED IN THE CRAFT BARGAINING UNIT APPLIED FOR BY THE APPLICANT, LOCAL UNION 633.

16313-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. HARROLD'S COAL COMPANY LIMITED (RESPONDENT) V. FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
F.W. MURRAY AND P.J. O'KEEFFE.

DECISION OF THE BOARD: SEPTEMBER 1969.

1. AT THE HEARING OF THIS MATTER ON JULY 3, 1969, THE RESPONDENT RAISED THE ISSUE AS TO THE STATUS OF TWO PERSONS CONCERNED IN THE APPLICATION. THE RESPONDENT CLAIMED THAT THEY WERE INDEPENDENT CONTRACTORS AND NOT EMPLOYEES. THE BOARD DIRECTED AN EXAMINER TO INQUIRE INTO THE EMPLOYMENT STATUS OF THE TWO PERSONS.
2. DURING THE COURSE OF THE EXAMINER'S HEARING, THE RESPONDENT OBJECTED TO A QUESTION DIRECTED TO AN OFFICER OF THE COMPANY WITH RESPECT TO THE NUMBER OF CUSTOMERS AND ACCOUNTS WHICH THE RESPONDENT COMPANY HELD. WRITTEN SUBMISSIONS ON THE ISSUE FROM THE RESPONDENT AND THE APPLICANT DATED RESPECTIVELY AUGUST 29, 1969 AND SEPTEMBER 3, 1969, HAVE BEEN RECEIVED AND CONSIDERED BY THE BOARD.
3. THE RESPONDENT ADMITS IN ITS SUBMISSION THAT THE APPLICANT MAY PUT WHAT THE RESPONDENT CALLS "PROPER QUESTIONS" DIRECTED TOWARD DISCOVERING WHETHER OR NOT THE TWO PERSONS WERE PAID IN RELATION TO

THE NUMBER OF ACCOUNTS THEY SERVICED AND AS TO WHETHER OR NOT THE NUMBER OF ACCOUNTS (AND THE CONSEQUENT PAYMENT) HAS RECENTLY DECREASED OR INCREASED. IN OUR OPINION, NOT ONLY IS THE FOREGOING TRUE, BUT IT IS ALSO OBVIOUSLY OPEN TO THE RESPONDENT PARTICULARLY ON AN ISSUE DIRECTLY RAISED IN OPPOSITION TO THE APPLICATION BY THE RESPONDENT, TO DIRECT ITS OWN QUESTION TOWARD THAT ISSUE. WHETHER OR NOT SUCH QUESTIONS DISCLOSE "CONFIDENTIAL" INFORMATION, DOES NOT AFFECT THEIR ADMISSABILITY PROVIDED THEY ARE OTHERWISE RELEVANT. WE DO NOT PROPOSE, FROM THIS DISTANCE AT LEAST, TO DIRECT THE PRECISE FORM IN WHICH THE APPLICANT MAY PUT QUESTIONS WHICH ARE RELEVANT TO THE ISSUES AS IT APPEARS THE ONES IN ISSUE ARE.

4. THE APPLICANT'S QUESTION IS, IN THE PRESENT CONTEXT, ADMISSABLE BECAUSE IT PLAINLY RELATES TO THE VERY POINT AT ISSUE AND THE RESPONDENT IS DIRECTED TO ANSWER THE SAME. WE MIGHT ADD THAT IT SEEMS THAT DELAY IN THE PROCEEDINGS MIGHT HAVE BEEN AVOIDED HAD THE RESPONDENT AT THE HEARING BEFORE THE EXAMINER SUPPLIED THE ANSWERS TO ITS OWN PROPOSED QUESTIONS. IN ORDER TO AVOID FURTHER DELAY, OBJECTIONS TO THE ADDUCING OF EVIDENCE SHOULD BE NOTED BY THE EXAMINER AND THE QUESTIONS PUT AND ANSWERED SUBJECT TO THE BOARD'S RULING ON ADMISSABILITY IN ITS FINAL DISPOSITION AFTER HEARING SUCH REPRESENTATIONS WITH RESPECT THERETO AS THE PARTIES MAY DEEM ADVISABLE.

5. THE EXAMINER IS DIRECTED TO PROCEED WITH THE EXAMINATION.

16326-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. MERIDIAN DEVELOPMENTS (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE FOR THE APPLICANT, AND JOHN P. SANDERSON AND B. HOWARD FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 4, 1969.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT.

2. BY A DECISION IN THE FORMAL LIMITED CASE OLRB M.R. MAR. 1969 1290, THE BOARD FOUND THAT THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721; LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506; OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172; UNITED BROTHERHOOD OF

CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190; THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 WERE TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FOUND THAT THE SAID LOCALS WERE THE CONSTITUENT UNIONS OF THE APPLICANT. THE BOARD FURTHER FOUND THAT THE APPLICANT WAS A COUNCIL OF TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT. THE BOARD WAS SATISFIED THAT THE CONSTITUENT UNIONS OF THE APPLICANT HAD VESTED APPROPRIATE AUTHORITY IN THE APPLICANT TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF A BARGAINING AGENT, PURSUANT TO SECTION 8A(1) OF THE ACT.

3. THE BOARD FINDS THAT THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. BASED ON THE EVIDENCE BEFORE US, THE BOARD FURTHER FINDS THAT THE SAID LOCAL HAS BECOME A CONSTITUENT MEMBER OF THE APPLICANT. THE BOARD, MOREOVER, IS SATISFIED THAT, LOCAL 183 HAS VESTED APPROPRIATE AUTHORITY IN THE APPLICANT TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF A BARGAINING AGENT, PURSUANT TO SECTION 8A(1) OF THE ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED AUGUST 7TH, 1969, AND THE WRITTEN AND ORAL REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT.

6. THE APPLICANT IS APPLYING FOR A UNIT COMPOSED OF ALL CONSTRUCTION WORKERS. HAVING REGARD TO THE BOARD'S DECISION IN A.K. PENNER AND SONS CASE OLRB M.R. OCT. 1966 493, THE BOARD IS ONLY PREPARED TO GRANT A UNIT COMPOSED OF THE TRADES IN THE EMPLOY OF THE RESPONDENT ON THE JOBS IN THE GEOGRAPHIC AREA CONCERNED AS OF THE DATE OF THE MAKING OF THE APPLICATION. THE BOARD FINDS THAT ALL OF THE EMPLOYEES OF THE RESPONDENT WERE EMPLOYED AS LABOURERS. THE BOARD ACCORDINGLY FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. BASED ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER THE BOARD FINDS THAT F. BARROSO, D. GOUVEIA, M. GOUVEIA, C. DE FREITAS, G. DE SOUSA, R. HIGGS, H. KNIPS, J. PEREIRA, A. PEREIRA, D. SERVIDEO, R. STANLEY, G. THORNE AND M. VIEIRA ARE ESSENTIALLY A MAINTENANCE CREW ENGAGED ON A FULL-TIME BASIS IN DOING WORK IN CONNECTION WITH LANDSCAPING AND GARDENING. ACCORDINGLY WE FIND THAT THEY ARE NOT CONSTRUCTION LABOURERS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

8. BASED ON THE EVIDENCE IN THE REPORT OF THE EXAMINER WE FURTHER FIND THAT A. BARROZO, J. CARREIRA, M. CIAMPO, D. CRISTILLO, G. DAMIANO, F. DELGOBBO, F. DI MARCO, D. DI SAVINO, R. DI SIMME, D. GARROZZA, D. GRECCO, C. IAMONACO, G. PALOMBI, A. PROCTOR, A. PULLA, S. STEFANAC, G. TROLIO, P. ZONI, D. NOCERA AND N. PANARESE AT THE RELEVANT TIME WERE EMPLOYED AS CONSTRUCTION LABOURERS AND ARE INCLUDED IN THE BARGAINING UNIT.

9. THE BOARD FURTHER FINDS BASED ON THE REPORT OF THE EXAMINER THAT A. GIZZO, C. SANTOSUOSSO AND T. CURTI ARE WORKING FOREMEN AND ARE INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER FINDS THAT D. MARGOLA IS A NON-WORKING FOREMAN AND IS NOT INCLUDED IN THE BARGAINING UNIT.

10. THE BOARD FURTHER FINDS THAT J. CIAVATTA AT THE RELEVANT TIME WAS NOT A CONSTRUCTION LABOURER AND IS NOT INCLUDED IN THE BARGAINING UNIT.

11. THE LIST OF EMPLOYEES OF THE RESPONDENT WHO ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT IS 67. THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP FOR 38 PERSONS WHO ARE INCLUDED IN THE UNIT. THE BOARD THEREFORE IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON JUNE 25TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16329-69-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS
INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. LOCAL 197 (APPLICANT) v.
CORKTOWN PUBLIC HOUSE (RESPONDENT) v. GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: STANLEY SIMPSON, WILLIAM ADAMS FOR THE APPLICANT; DENNIS F. O'LEARY FOR THE RESPONDENT; MYLES E. MCINTOSH FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: SEPTEMBER 30, 1969.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED AUGUST 27TH 1969 WE FIND THAT DENIS KAVANAGH IS NOT INCLUDED IN THE BARGAINING UNIT. MR. KAVANAGH, THE SON OF THE OWNER, IS ATTENDING SCHOOL IN THE UNITED STATES AND WORKING TOWARDS A MASTER OF BUSINESS DEGREE INVOLVING HOTEL ADMINISTRATION. MR. KAVANAGH WORKS IN THE BUSINESS FROM TIME TO TIME WHEN HE IS ON VACATION. IT IS INTENDED THAT MR. KAVANAGH WILL ULTIMATELY TAKE OVER THE BUSINESS. COINCIDENTALLY, HE HAD BEEN WORKING ON THE PREMISES WHEN THE APPLICATION FOR CERTIFICATION WAS MADE ON JUNE 18TH, AND THEN RETURNED TO THE UNITED STATES ON JULY 15TH FOR THE PURPOSE OF TAKING FURTHER COURSES FOR HIS DEGREE. IN ADDITION, WHEN MR. KAVANAGH TESTIFIED BEFORE THE BOARD ON ANOTHER ISSUE HE INDICATED THAT HE ACTED AS THE MANAGER ON AT LEAST ONE OCCASION WHEN THE OWNER WAS ILL. IN ALL THE CIRCUMSTANCES OF THIS CASE WE ARE OF THE OPINION THAT MR. KAVANAGH DOES NOT HAVE A COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES AND, ACCORDINGLY, IS EXCLUDED FROM THE APPROPRIATE BARGAINING UNIT.

4. WE ARE ALSO OF THE OPINION THAT MYLES MCINTOSH EXERCISES MANAGERIAL FUNCTIONS. IT APPEARS THAT HE HAS BEEN INVOLVED IN THE HIRING PROCESS TO THE EXTENT OF DISCUSSING WAGES WITH PROSPECTIVE EMPLOYEES AND HE ASSIGNS WORK TO EMPLOYEES IN SUCH A MANNER THAT THE MERE ASSIGNMENT CAN AFFECT THEIR RATES OF PAY. HE PURCHASES SUPPLIES AND HAS A KEY TO THE PREMISES AND THERE IS FURTHER EVIDENCE THAT HE HAS DISMISSED AN EMPLOYEE. MR. MCINTOSH WAS NOT CALLED IN REPLY TO REBUTT THE EVIDENCE WITH RESPECT TO THE DISMISSAL OF AN EMPLOYEE AND, ACCORDINGLY, WE ACCEPT THE EVIDENCE THAT HE WAS INVOLVED IN THAT SITUATION. HAVING REGARD TO ALL THE EVIDENCE WE FIND THAT MR. MCINTOSH EXERCISES MANAGERIAL FUNCTIONS AND ACCORDINGLY, IS EXCLUDED FROM THE BARGAINING UNIT.

5. HAVING REGARD TO THE EVIDENCE, AND TO THE SUBMISSIONS OF COUNSEL WITH RESPECT TO THE ORIGATION AND CIRCULATION OF THE STATEMENT OF DESIRE, WE ARE OF THE OPINION THAT THE STATEMENT OF DESIRE DOES NOT REFLECT THE TRUE WISHES OF THE EMPLOYEES. WE THEREFORE FIND THAT IT DOES NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 27TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16365-69-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLAZIERS AND GLASSWORKERS, LOCAL UNION 1819 (APPLICANT) V. PILKINGTON BROTHERS (CANADA) LIMITED (RESPONDENT) INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 424 (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE:

APPEARANCES AT THE HEARING: R. KOSKIE FOR THE APPLICANT; F. R. VON VEH, N. B. SATTERFIELD, J. S. HOLLAND FOR THE RESPONDENT; TED WOHL, THOMAS SLOAN FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 15, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN VAUGHAN TOWNSHIP WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE RESPONDENT AND THE INTERVENER SUBMITTED THAT THE APPLICATION IS UNTIMELY BECAUSE OF A COLLECTIVE AGREEMENT MADE BETWEEN THEM PURPORTING TO COVER THE EMPLOYEES OF THE RESPONDENT WHO WOULD BE CONCERNED IN THIS APPLICATION WHICH DOES NOT EXPIRE UNTIL NOVEMBER 1970. THE BOARD HEARD THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES RELATING TO THE TIMELINESS OF THIS APPLICATION AND RESERVED ITS DECISION WITHOUT DEALING IN ANY WAY WITH THE REMAINING ISSUES OUTSTANDING AMONG THE PARTIES.

2. THE RESPONDENTS OPERATED FROM A NUMBER OF BRANCHES IN TORONTO INCLUDING THE LEASIDE BRANCH (KNOWN AS THE CENTRAL WORKS), AND THE TORONTO SALES OFFICE LOCATED ON MERCER STREET AND ELLESMERE STREET. BY VOLUNTARY RECOGNITION IN 1962 THE RESPONDENT AND THE INTERVENER BECAME PARTIES TO A COLLECTIVE AGREEMENT COVERING THE RESPONDENT'S EMPLOYEES AT ITS CENTRAL WORKS AND CONTINUED ITS RELATIONSHIP UP TO THE LATEST AGREEMENT WHICH IS DATED MARCH 5TH 1969. THE RESPONDENT AND THE APPLICANT ARE PARTIES TO A COLLECTIVE AGREEMENT DATED JUNE 1ST 1966 COVERING THE RESPONDENT'S EMPLOYEES AT ITS TORONTO SALES OFFICE, AND WHICH EXPIRED ON MAY

31st 1969. IN THE FALL OF 1968 THE RESPONDENT DECIDED TO MERGE ITS OPERATIONS AT ONE LOCATION AND COMMENCED TO CONSTRUCT A PLANT KNOWN AS THE TORONTO DISTRIBUTION CENTRE IN VAUGHAN TOWNSHIP, WHICH IS THE SUBJECT OF THIS APPLICATION. TO THIS PLANT WERE TRANSFERRED A MAJORITY OF THE EMPLOYEES FORMERLY AT ITS CENTRAL WORKS AND THOSE OF THE TORONTO SALES OFFICE. ALL THE EQUIPMENT WITH LITTLE EXCEPTION AND 95 PER CENT OF THE PRODUCTION AT LEASIDE WERE TRANSFERRED TO THE NEW PLANT, THE BALANCE OF WHICH WAS DISCONTINUED. THE RELOCATION OF THE EMPLOYEES FROM THE CENTRAL WORKS WAS MADE PROGRESSIVELY FROM THE SECOND WEEK IN MARCH THROUGH APRIL AND COMPLETED BY MAY 31st 1969. THE PARTIES AGREED THAT ON MARCH 5TH 1969 THE INTERVENER REPRESENTED THE EMPLOYEES OF THE RESPONDENT AT ITS CENTRAL WORKS; THAT THERE WERE NO EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN VAUGHAN TOWNSHIP AT THE AFORESAID DATE; THAT ON APRIL 30TH 1969 THE INTERVENER REPRESENTED A MAJORITY OF EMPLOYEES AT THE PLANT IN VAUGHAN TOWNSHIP, NONE OF WHOM WERE FROM THE TORONTO SALES OFFICE. IT APPEARED THAT THE EMPLOYEES FORMERLY AT THE TORONTO SALES OFFICE WERE TRANSFERRED SOME TIME AFTER THE COMPLETION OF THE TRANSFER OF THE CENTRAL WORKS OPERATIONS.

3. THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND PILKINGTON BROTHERS (CANADA) LIMITED WHICH EXPIRED ON NOVEMBER 30TH 1968 SET OUT IN THE SCOPE CLAUSE THAT THE COMPANY RECOGNIZED THE UNION AS "THE SOLE COLLECTIVE BARGAINING AGENCY FOR ALL EMPLOYEES OF THE COMPANY AT CENTRAL WORKS, BOROUGH OF EAST YORK (OR SUCH OTHER METROPOLITAN TORONTO LOCATION AS REFERRED TO IN THE LETTER OF INTENT FROM THE COMPANY DATED DECEMBER 13TH 1967)." COLLECTIVE AGREEMENTS PRIOR TO THAT AGREEMENT REFERRED ONLY TO THE CENTRAL WORKS AT LEASIDE. BY LETTER DATED DECEMBER 13TH 1967 THE COMPANY ADVISED THE UNION THAT IF THE CENTRAL WORKS MOVED TO ANOTHER LOCATION IN METROPOLITAN TORONTO DURING THE LIFE OF THE AGREEMENT, IT WOULD CONTINUE TO RECOGNIZE THE UNION AS THE BARGAINING AGENT, "PROVIDED THERE ARE NO OTHER COMPANY EMPLOYEES AT THE LOCATION REPRESENTED BY ANOTHER UNION AND WHO WOULD CONSTITUTE A MAJORITY OF THE EMPLOYEES IF COMBINED WITH THE EMPLOYEES WHOM YOUR UNION REPRESENTS." IN NOVEMBER 1968 THE INTERVENER AND THE COMPANY BEGAN NEGOTIATIONS FOR A RENEWAL OF THE AGREEMENT THEN EXPIRING AND REACHED AN UNDERSTANDING SET OUT IN A MEMORANDUM OF AGREEMENT DATED DECEMBER 23RD 1968. ONE OF THE UNION'S PROPOSALS AT THAT TIME WAS TO HAVE THE COMPANY RECOGNIZE IT AS BARGAINING AGENT FOR THE EMPLOYEES IN THE PROVINCE OF ONTARIO BUT IT WAS AGREED TO AMEND THE SCOPE CLAUSE TO DELETE THE REFERENCE TO "SUCH OTHER METROPOLITAN LOCATION" AND SUBSTITUTE "AT ITS PRESENT SITE IN THE BOROUGH OF EAST YORK AND ITS PROPOSED NEW SITE IN VAUGHAN TOWNSHIP." THIS MEMORANDUM OF AGREEMENT WAS SUBSEQUENTLY REJECTED BY THE MEMBERS. IN FEBRUARY, NEGOTIATIONS RESUMED WITH A CONCILIATION OFFICER WHO WAS APPOINTED ON FEBRUARY 8TH 1969. AN AGREEMENT WAS THEN REACHED BY THE PARTIES CULMINATING IN THE EXECUTION OF THE

AFOREMENTIONED COLLECTIVE AGREEMENT DATED MARCH 5TH 1969. BY THIS AGREEMENT THE COMPANY RECOGNIZED THE UNION AS THE "SOLE COLLECTIVE BARGAINING AGENCY FOR ALL EMPLOYEES OF THE COMPANY AT CENTRAL WORKS, (AT ITS PRESENT SITE IN THE BOROUGH OF EAST YORK AND ITS PROPOSED NEW SITE IN VAUGHAN TOWNSHIP) WITH CERTAIN EXCEPTIONS." MR. HOLLAND, MANAGER OF THE TORONTO DISTRIBUTION CENTRE, WAS FORMERLY WORKS MANAGER AT CENTRAL WORKS AND SAID THAT THE COMPANY'S INTENTION THROUGHOUT WAS TO RECOGNIZE THE INTERVENER AS BARGAINING AGENT IF THE CENTRAL WORKS WAS RELOCATED AS IT HAD BEEN THE BARGAINING AGENT AT LEASIDE AND REPRESENTED A MAJORITY OF THE COMPANY'S EMPLOYEES. IN OCTOBER 1968, THROUGH A NEWSPAPER REPORT, THE INTENTION OF THE COMPANY TO RELOCATE IN VAUGHAN TOWNSHIP BECAME PUBLIC KNOWLEDGE.

4. FOLLOWING THE NEGOTIATION OF THE CURRENT COLLECTIVE AGREEMENT THE INTERVENER AND THE RESPONDENT FURTHER NEGOTIATED AN AMENDING AGREEMENT DATED APRIL 30TH 1969 WHICH WAS EXECUTED ON OR ABOUT MAY 13TH 1969, THE RECITALS IN WHICH ARE OF INTEREST AND ARE AS FOLLOWS:

"WHEREAS THE PARTIES HERETO ARE PARTIES TO A COLLECTIVE AGREEMENT HAVING EFFECT FROM THE 5TH DAY OF MARCH 1969 TO AND INCLUDING THE 30TH DAY OF NOVEMBER 1970 GOVERNING THE RELATIONS BETWEEN THE COMPANY AND THOSE OF ITS EMPLOYEES COMING WITHIN THE SCOPE OF THE AFORESAID AGREEMENT; AND

WHEREAS THE AFORESAID AGREEMENT RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR EMPLOYEES OF CENTRAL WORKS DEFINED IN PARAGRAPH 2.01 OF THE COLLECTIVE AGREEMENT AT THE COMPANY'S PROPOSED NEW LOCATION IN VAUGHAN TOWNSHIP; AND

WHEREAS THE COMPANY IS REORGANIZING ITS ACTIVITIES TO COMBINE THE DISTRIBUTION ACTIVITIES OF ITS TORONTO BRANCH WITH THE ACTIVITIES OF THE CENTRAL WORKS AT THE NEW LOCATION WHICH WILL BE KNOWN AS THE TORONTO DISTRIBUTION CENTRE AND WILL BE TRANSFERRING EMPLOYEES FROM THE TORONTO BRANCH WHO ARE MEMBERS OF THE "INSIDE" BARGAINING UNIT REPRESENTED IN COLLECTIVE BARGAINING BY THE CLAZIERS LOCAL UNION 1819 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA TO THE TORONTO DISTRIBUTION CENTRE; AND

WHEREAS THE PARTIES DESIRE TO MERGE THE EMPLOYEES FROM THE TORONTO BRANCH AS DEFINED ABOVE AND CENTRAL WORKS INTO ONE BARGAINING UNIT".

THIS AGREEMENT THEN PROVIDES FOR THE SENIORITY PROTECTION OF THOSE EMPLOYEES WHO WOULD BE TRANSFERRED FROM THE TORONTO SALES OFFICE IN MERGING IT WITH THE CENTRAL WORKS. IT IS ALSO SIGNIFICANT TO NOTE CLAUSES 8 AND 9 OF THAT AGREEMENT WHICH ARE AS FOLLOWS:

"8. THE COMPANY RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR ALL EMPLOYEES OF THE COMPANY AT THE TORONTO DISTRIBUTION CENTRE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, TECHNICAL SALARIED EMPLOYEES, CAFETERIA ATTENDANTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SECURITY GUARDS AND EMPLOYEES MENTIONED IN ITEM 6 HEREOF.

9. THE ABOVE MENTIONED COLLECTIVE AGREEMENT BETWEEN THE PARTIES HERETO, AS AMENDED BY ITEMS 1 TO 8 BOTH INCLUSIVE OF THIS AGREEMENT, SHALL REMAIN IN FULL FORCE AND EFFECT."

ACCORDING TO MR. HOLLAND, ACTUAL PRODUCTION AT THE NEW LOCATION BEGAN IN MAY. THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT EXPIRED ON MAY 31ST 1969. ON JULY 8TH 1969 THE MINISTER OF LABOUR ADVISED THE PARTIES THAT A CONCILIATION BOARD WOULD NOT BE APPOINTED. MR. HOLLAND ADMITTED THAT THE APPLICANT WAS NOT ADVISED OF THE PROCEEDINGS WITH THE INTERVENER AND THAT THE COMPANY WAS NEGOTIATING WITH THE APPLICANT DURING THE TIME IT WAS ALSO NEGOTIATING WITH THE INTERVENER. HE SAID, HOWEVER, THAT NO COMPLAINT WAS MADE BY THE APPLICANT FOR THE COMPANY AT ANY TIME CONCERNING THE TRANSFER OF OPERATIONS TO VAUGHAN TOWNSHIP. MR. SATTERFIELD, CORPORATE PERSONNEL MANAGER, STATED THAT BY APRIL 30TH THE MAJORITY OF EMPLOYEES (60-65) WERE EMPLOYED AT VAUGHAN TOWNSHIP BUT NONE AT THAT TIME WERE FORMERLY EMPLOYEES OF THE TORONTO SALES OFFICE; HOWEVER, THERE WAS NOT A FULL COMPLEMENT AT THAT TIME. HE WAS AWARE THAT BARGAINING RIGHTS WERE BEING TAKEN AWAY FROM THE APPLICANT AND, ON THE DAY THAT THE COMPANY ANNOUNCED THE NEW OPERATIONS (JANUARY 27TH 1969), AND AGAIN IN APRIL, HAD DISCUSSIONS WITH A REPRESENTATIVE OF THE APPLICANT CONCERNING THE BARGAINING RIGHTS BEING ASSUMED BY THE INTERVENER. HE SAID THAT THE APPLICANT WAS ADVISED OF THE AGREEMENT ENTERED INTO BETWEEN THE COMPANY AND THE INTERVENER.

5. THE RESPONDENT'S EVIDENCE ESTABLISHED THAT, OF THE PERSONS IN THE BARGAINING UNIT EMPLOYED AT CENTRAL WORKS IN LEASIDE IN NOVEMBER 1968, 56 WERE EMPLOYED AT THE TORONTO DISTRIBUTION CENTRE AT THE DATE OF THIS APPLICATION. FURTHER, OF THE 59 EMPLOYEES WORKING AT THE TORONTO DISTRIBUTION CENTRE IN APRIL, 57 REMAINED AS OF JUNE 26TH 1969. THE TOTAL NUMBER OF EMPLOYEES AS SHOWN ON THE SCHEDULES FILED BY THE RESPONDENT IN THIS APPLICATION WAS 89 AND WAS NEVER HIGHER PRIOR TO JUNE 26TH 1969 TO WHICH DATE THERE HAD BEEN A BUILD UP OF EMPLOYEES. WE DO NOT HAVE ANY EVIDENCE OF WHEN THE APPLICANT'S MEMBERSHIP CAMPAIGN COMMENCED, BUT THE EARLIEST DATE APPEARING ON A MEMBERSHIP CARD IS JUNE 26TH 1969.

6. IN OUR VIEW, IT IS IMPORTANT TO CONSIDER THAT WHAT IN FACT THE RESPONDENT DID WAS TO MOVE CERTAIN OF ITS OPERATIONS FROM ONE LOCATION TO ANOTHER, AND DID NOT OPEN A NEW LOCATION AND MERELY TRANSFER PERSONNEL TO IT FROM OTHER LOCATIONS WHICH REMAINED IN OPERATION. IN THIS CASE THE OLD LOCATIONS WERE PHASED OUT. IF IT HAD BEEN THAT THE TORONTO SALES OFFICE HAD BEEN CLOSED AND THE EMPLOYEES MERGED WITH THOSE IN THE CENTRAL WORKS AT LEASIDE, THERE WOULD BE NO COMPLAINT THAT THE INTERVENER WOULD REPRESENT ALL OF THE EMPLOYEES UNDER THE COLLECTIVE AGREEMENT THEN IN EFFECT. HOWEVER, THE INTERVENER AFTER BECOMING AWARE THAT THE CENTRAL WORKS WOULD BE RELOCATED, TOOK POSITIVE STEPS IN NEGOTIATIONS TO PROVIDE FOR THE CONTINUATION OF ITS BARGAINING RIGHTS IN SUCH EVENT. THERE IS NOTHING IMPROPER IN THE INTERESTS OF A STABLE INDUSTRIAL RELATIONSHIP FOR PARTIES TO A COLLECTIVE AGREEMENT EXPANDING THE SCOPE OF RECOGNITION. THE EVIDENCE DISCLOSES THAT THE INTERVENER AND THE COMPANY, BY THE AGREEMENT DATED APRIL 30TH 1969, PROVIDED FOR THE CERTAIN RIGHTS OF THOSE EMPLOYEES OF THE TORONTO SALES OFFICE WHO WOULD BE MERGED WITH THE EMPLOYEES AT THE NEW PLANT. CLEARLY ON THE EVIDENCE, THE INTERVENER REPRESENTED THE MAJORITY OF THE EMPLOYEES AT THE CENTRAL WORKS ON MARCH 5TH AND WAS ENTITLED AS THEIR BARGAINING AGENT TO ENTER INTO THE COLLECTIVE AGREEMENT WITH THE COMPANY. EQUALLY THE COMPANY WAS SATISFIED THAT THE INTERVENER REPRESENTED SUCH EMPLOYEES AND ACTED ON THAT BASIS IN GOOD FAITH. WE FIND THAT THIS COLLECTIVE AGREEMENT WAS NOT A FIRST AGREEMENT BETWEEN THOSE PARTIES WITH RESPECT TO THE CENTRAL WORKS. WE ARE NOT PERSUADED BY THE ARGUMENT OF THE APPLICANT THAT THERE WERE TWO BARGAINING UNITS SET OUT IN THAT COLLECTIVE AGREEMENT. IT REFERS ONLY TO THE CENTRAL WORKS WHETHER IT BE AT LEASIDE OR IN VAUGHAN TOWNSHIP. IT IS THE SAME BARGAINING UNIT FOR WHICH THE INTERVENER HAS EXERCISED ITS RIGHTS AS BARGAINING AGENT AND ON WHICH THE COMPANY PROPERLY RELIED THAT IT REPRESENTED A MAJORITY OF ITS EMPLOYEES. WE FIND THEREFORE THAT SECTION 45A OF THE LABOUR RELATIONS ACT HAS NO APPLICATION TO THIS MATTER.

7. THE RESPONDENT AND THE INTERVENER HAVE HAD A CONSIDERABLE HISTORY OF A COLLECTIVE BARGAINING RELATIONSHIP DURING WHICH, IN THE PROCESS OF ARRIVING AT THE CURRENT COLLECTIVE AGREEMENT INTER ALIA, A PROPOSAL WAS MADE AND REJECTED, A CONCILIATION OFFICER APPOINTED, AND DIRECT NEGOTIATIONS TOOK PLACE. FOLLOWING THE EXECUTION OF THE AGREEMENT AN AMENDMENT WAS AGREED UPON TO DEAL WITH THE PROBLEMS ARISING FROM THE TRANSFER OF THE TORONTO SALES OFFICE TO THE NEW LOCATION. THERE IS NO EVIDENCE TO SHOW THAT THE APPLICANT WAS ORGANIZING DURING ANY OF THIS PERIOD OF TIME AND WE FIND NOTHING IMPROPER IN THE ACTIONS OF THE INTERVENER OR THE RESPONDENT THROUGHOUT TO MAINTAIN THE ALLEGATION THAT THE AGREEMENT SHOULD NOT BE GIVEN WEIGHT BECAUSE IT WAS SIGNED IN THE FACE OF THE APPLICANT'S ORGANIZING CAMPAIGN TO THWART SUCH A CAMPAIGN OR THAT IT WAS DESIGNED TO DEPRIVE ANY EMPLOYEES OF THEIR RIGHT TO REPRESENTATION IN COLLECTIVE BARGAINING. THE ALLEGATION OF THE APPLICANT THAT THE COLLECTIVE AGREEMENT SUBMITTED AS A BAR WAS A "SWEETHEART" ARRANGEMENT IS NOT SUPPORTED ON ANY OF THE EVIDENCE BEFORE US. WE ARE SATISFIED THAT THE INTERVENER AND THE RESPONDENT ACTED IN GOOD FAITH AT ALL THE MATERIAL TIMES CONCERNED IN THIS MATTER AND WE DO NOT AGREE THAT THE AGREEMENT BETWEEN THEM SHOULD BE NULLIFIED FOR THE REASONS SUGGESTED BY THE APPLICANT.

8. WE FIND THEREFORE THAT THE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT DATED MARCH 5TH 1969 IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THOSE PARTIES COVERING THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION AND WHICH DOES NOT EXPIRE UNTIL NOVEMBER 30TH 1970. PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE ACT WE FIND THIS APPLICATION IS UNTIMELY.

9. THE APPLICATION IS ACCORDINGLY DISMISSED.

16393-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. SHELL CANADA LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

- AND -

16422-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 722 (APPLICANT) v. SHELL CANADA LIMITED (RESPONDENT) v. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (INTERVENER #1) v. SHELL OAKVILLE REFINERY EMPLOYEES' COUNCIL (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: EDWARD A. WADDELL APPEARING FOR OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION; W. S. COOK, W. M. CATTERSON, W. J. JARVIS AND R. W. PIRRIE APPEARING FOR THE RESPONDENT; FRED G. GRIGSBY AND ROSS AULENBACK APPEARING FOR INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772; JOSEPH DEONI AND LES PHILLIS APPEARING FOR SHELL OAKVILLE REFINERY EMPLOYEES' COUNCIL.

DECISION OF THE BOARD: SEPTEMBER 3, 1969.

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2. OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE CURRENTLY REPRESENTED BY SHELL OAKVILLE REFINERY EMPLOYEES' COUNCIL. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE STATIONARY ENGINEERS AND HELPERS EMPLOYED BY THE RESPONDENT AT ITS STEAM PLANT AT OAKVILLE.

3. THE STATIONARY ENGINEERS AND THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT ARE CURRENTLY EMPLOYED BY THE RESPONDENT AS PART OF AN OVERALL INDUSTRIAL BARGAINING UNIT REPRESENTED BY THE EMPLOYEES' COUNCIL.

4. THERE WAS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES ON THE FACTS IN THIS CASE.

5. LOCAL 772 ARGUED THAT STATIONARY ENGINEERS AND THEIR HELPERS EMPLOYED BY THE RESPONDENT ARE ENTITLED TO BE REPRESENTED BY LOCAL 772 BECAUSE OF THE RECOGNIZED CRAFT STATUS OF STATIONARY ENGINEERS. IT WAS ALSO ARGUED THAT ANY WORK PERFORMED BY THE STATIONARY ENGINEERS IN ADDITION TO NORMAL STATIONARY ENGINEERS' DUTIES WAS A MINOR PART OF THEIR WORK.

6. THE BOARD FINDS THAT THE STATIONARY ENGINEERS IN THE EMPLOY OF THE RESPONDENT ARE CURRENTLY BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE EMPLOYEES' COUNCIL AND HAVE BEEN BARGAINED FOR BY THE EMPLOYEES' COUNCIL SINCE 1963. THE BOARD FURTHER FINDS THAT THE COLLECTIVE AGREEMENT COVERING THE STATIONARY ENGINEERS HAS A WAGE SCHEDULE WHICH REFERS TO THE STATIONARY ENGINEERS AS OPERATORS OR ASSISTANT OPERATORS AND THIS CLASSIFICATION INCLUDES OTHER EMPLOYEES IN THE RESPONDENT'S REFINERY. IT APPEARS THAT, IN ADDITION TO THE STATIONARY ENGINEERS WHO OPERATE THE RESPONDENT'S STEAM PLANT, THE RESPONDENT EMPLOYS OTHER PERSONS IN THE CLASSIFICATION OF OPERATORS WHO ARE TICKETED STATIONARY ENGINEERS. THE STATIONARY ENGINEERS WHO OPERATE THE RESPONDENT'S STEAM PLANT ALSO OPERATE THE RESPONDENT'S SULPHUR PLANT. THE RESPONDENT'S SULPHUR PLANT IS PART OF THE REFINERY OPERATION CARRIED ON BY THE RESPONDENT. THE STEAM PLANT IS FUELED BY HYDROGEN SULPHIDE GAS WHICH IS A WASTE PRODUCT OF THE REFINERY OPERATION. SULPHUR IS EXTRACTED FROM THIS GAS AS PART OF THE STEAM PLANT OPERATION. THE STATIONARY ENGINEERS ARE PRIMARILY EMPLOYED IN A CONTROL ROOM WHERE OTHER OPERATORS ARE ALSO EMPLOYED ON DIFFERENT OPERATIONS OF THE RESPONDENT'S REFINERY PROCESSES.

STATIONARY ENGINEERS HAVE BEEN ELECTED TO EXECUTIVE POSITIONS ON THE EMPLOYEES' COUNCIL AND HAVE PARTICIPATED IN BARGAINING AND GRIEVANCE PROCEDURES. AT TIMES STATIONARY ENGINEERS HAVE BEEN TRANSFERRED FROM THE GENERAL OPERATORS GROUP TO THE STATIONARY ENGINEERS GROUP.

7. HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE LILLY CUP CASE, ONTARIO LABOUR RELATIONS BOARD, MONTHLY REPORT JUNE 1961, PAGE 370; CANADA FOUNDRIES AND FORGINGS LTD. CASE 1961, CCH CANADA LABOUR LAW REPORTER PARA. 16,203, CLS 76-753; AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE 1501-61-R, THE DOMINION FABRICS CASE BOARD FILE 2331-61-R; THE DARLING AND COMPANY OF (CANADA) CASE, OLRB MONTHLY REPORT NOVEMBER 1961, PAGE 237, AND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND SHELL OAKVILLE REFINERY EMPLOYEES' COUNCIL AS EVIDENCED BY THE CONTINUOUS REPRESENTATION BY THE EMPLOYEES' COUNCIL OF THE STATIONARY EMPLOYEES, THE PARTICIPATION OF STATIONARY ENGINEERS AS MEMBERS OF THE EXECUTIVE OF THE EMPLOYEES' COUNCIL AND THE COMMUNITY OF INTEREST AND INTERRELATIONSHIP OF THE STATIONARY ENGINEERS WITH OTHER OPERATORS OF THE RESPONDENT AND THE OPPOSITION TO THE APPLICATION BY THE RESPONDENT AND THE EMPLOYEES' COUNCIL, THE BOARD IS OF OPINION THAT IT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT AGAINST LOCAL 772 AND FINDS THAT THE UNIT PROPOSED BY LOCAL 772 IS INAPPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE.

8. THE APPLICATION OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 IS THEREFORE DISMISSED.

9. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO DESTROY THE BALLOTS CAST IN VOTING CONSTITUENCY #1 IN THIS MATTER FOLLOWING THE EXPIRATION OF THIRTY DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF THE THIRTY DAY PERIOD.

10. THE BOARD THEREFORE FINDS THAT THE STATIONARY ENGINEERS WHO CAST A SEGREGATED BALLOT IN VOTING CONSTITUENCY #2 ARE ELIGIBLE TO VOTE AND THEIR SEGREGATED BALLOTS ARE TO BE COUNTED. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #2 TO BE COUNTED AND REPORT TO THE BOARD.

DECISION OF THE BOARD: SEPTEMBER 18, 1969.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 2 OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE PURSUANT TO THE BOARD'S DIRECTION OF JULY 25, 1969, IN THIS MATTER.

2. THE BOARD FINDS THAT OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS REFINERY AT OAKVILLE, SAVE AND EXCEPT SHIFT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT SUPERVISOR AND FOREMAN, LABORATORY PERSONNEL, WAREHOUSEMAN, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STUDENTS EMPLOYED UNDER A CO-OPERATIVE TRAINING PROGRAMME WITH A UNIVERSITY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION AT THE TIME THE APPLICATION WAS MADE.

5. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION.

6. A CERTIFICATE WILL ISSUE TO OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION.

7. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

16403-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BRANT COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND A. MAIN.

APPEARANCES AT THE HEARING: W. A. ACTON, E. A. MOYNES, D. SNOOKS AND R. SCHRAM FOR THE APPLICANT; MICHAEL GORDON FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 16, 1969.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE SERVICE AND PLANT OPERATIONS. THE APPLICANT SUBMITS THAT THE SIX PERSONS CLASSIFIED AS CHIEF CARETAKERS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ACCORDINGLY SHOULD BE INCLUDED IN THE BARGAINING UNIT. THE RESPONDENT, ON THE OTHER HAND, SUBMITS THAT THE CHIEF CARETAKERS DO EXERCISE MANAGERIAL FUNCTIONS AND THEREFORE SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

3. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS CLASSIFIED AS CHIEF CARETAKERS. THE PARTIES AGREED THAT THE EVIDENCE RELATING TO THE JOB FUNCTIONS OF B. J. HUFF, WOULD APPLY TO THE OTHER CHIEF CARETAKERS, NAMELY, M. PEPPLER, H. MEYNELL, R. TURNER, J. COXE AND R. TUINHOF. THE BOARD HAS CONSIDERED THE REPORT OF THE EXAMINER DATED AUGUST 20TH, 1969, AND THE WRITTEN AND ORAL REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT WITH RESPECT TO THE REPORT.

4. THE EVIDENCE IS THAT HUFF HAS APPROXIMATELY A DOZEN EMPLOYEES UNDER HIS SUPERVISION AND SPENDS MOST OF HIS TIME OVERSEEING AND DIRECTING THE WORK OF THESE EMPLOYEES. HE DOES NOT DO ANY ACTUAL PHYSICAL WORK HIMSELF OTHER THAN TO DEMONSTRATE OR INSTRUCT AN EMPLOYEE. HUFF DOES ALL OF THE BOOK WORK CONCERNED WITH HIS POSITION. HE KEEPS RECORDS OF TIME WORKED BY THE EMPLOYEES UNDER HIM, THEIR SICK LEAVE, OVERTIME AND ABSENCES. AS WELL HE PREPARES THEIR HOLIDAY SCHEDULES AND GRANTS TIME OFF ON HIS OWN INITIATIVE. IN ADDITION HUFF REQUISITIONS ALL MATERIALS NEEDED FOR THE SCHOOL, SUCH AS, PLUMBING AND WIRING SUPPLIES AND SEES THAT THE NECESSARY REPAIRS ARE CARRIED OUT. HUFF INTERVIEWS PROSPECTIVE EMPLOYEES AND MAKES RECOMMENDATIONS AS TO THEIR SUITABILITY FOR EMPLOYMENT. HE DOES NOT, HOWEVER, DO THE ACTUAL HIRING OF EMPLOYEES. SIMILARLY WHILE HE CANNOT DISCHARGE EMPLOYEES HE CAN AND HAS RECOMMENDED THAT AN EMPLOYEE BE DISCHARGED AND THE RECOMMENDATION WAS ACTED UPON. HUFF AS WELL HAS DISCIPLINARY AUTHORITY OVER THE EMPLOYEES IN HIS CHARGE.

5. BASED ON ALL OF THE EVIDENCE WE FIND THAT HUFF HAS SUFFICIENT INDEPENDENT AND EFFECTIVE AUTHORITY OVER THE EMPLOYEES WHO WORK UNDER HIM WHICH INCLUDES THEIR HIRING, ASSIGNMENTS OF WORK, DISCIPLINE AND DISCHARGE, AS TO CONSTITUTE MANAGERIAL RESPONSIBILITIES. THE BOARD ACCORDINGLY FINDS THAT THE PERSONS CLASSIFIED AS CHIEF CARETAKERS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT CHIEF CARETAKERS AND PERSONS ABOVE THE RANK OF CHIEF CARETAKER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT

MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 15TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16417-69-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH THE CANADIAN LABOUR CONGRESS AND A.F.L.-C.I.O. (APPLICANT) v. WRAGGE SHOES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: J. SACK, IAN E. REILLY AND ROY COOKE FOR THE APPLICANT; JOHN P. SANDERSON AND WM. ARMSTRONG FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 10, 1969.

1. BY DECISION DATED JULY 23RD, 1969, THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN THIS MATTER. THE NOTICE OF TAKING OF VOTE, FORM 42, THAT WAS POSTED ON THE RESPONDENT'S PREMISES SETS FORTH THE TIME FOR TAKING OF THE VOTE AS BEING FRIDAY, AUGUST 15TH, 1969, BETWEEN THE HOURS OF 8:30 A.M. AND 10:00 A.M. THESE TIMES WERE SPECIFICALLY AGREED TO BY THE PARTIES IN ORDER TO PERMIT ONE OF THE RESPONDENT'S EMPLOYEES WHO IS EMPLOYED AS A TRUCK DRIVER TO BE PRESENT DURING THE TIME THE VOTE WAS TAKEN. ON THE DAY THE VOTE WAS TAKEN, THE BOARD'S RETURNING OFFICER WHO WAS TO TAKE THE VOTE HAD DIFFICULTY WITH HIS AUTOMOBILE WHILE IN TRANSIT AND TELEPHONED R. WALTERS, THE PLANT SUPERINTENDENT OF THE RESPONDENT AT APPROXIMATELY 8:15 IN THE MORNING AND ADVISED HIM THAT HE WOULD BE LATE IN ARRIVING. THE EMPLOYEES WERE ADVISED OF THE REASON FOR THE DELAY IN THE TAKING OF THE VOTE. AFTER RECEIVING THE CALL FROM THE BOARD'S RETURNING OFFICER MR. WALTERS NOTICED THAT THE TRUCK DRIVER IN QUESTION LEFT THE PLANT IN HIS TRUCK TO MAKE HIS DELIVERIES.

2. THE RETURNING OFFICER ARRIVED ON THE RESPONDENT'S PREMISES AND OPENED THE POLL AT APPROXIMATELY 9:35 A.M.

AN OPPORTUNITY WAS GIVEN TO ALL THE EMPLOYEES WHO REMAINED ON THE RESPONDENT'S PREMISES TO VOTE. THE TRUCK DRIVER DID NOT CAST A BALLOT.

3. AFTER THE POLL WAS CLOSED THE RETURNING OFFICER ADVISED THE PARTIES THAT THEY WERE ENTITLED TO REMOVE THE NAME OF THE TRUCK DRIVER FROM THE REVISED VOTERS' LIST PURSUANT TO THE PROVISIONS OF SECTION 7(4) OF THE ACT. FAILING SUCH AGREEMENT THE RETURNING OFFICER FURTHER ADVISED THE PARTIES THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST WOULD BE SEALED AND THE RETURNING OFFICER WOULD RETURN ON A FUTURE DATE AT WHICH TIME THE TRUCK DRIVER WOULD BE GIVEN AN OPPORTUNITY TO VOTE. THE PARTIES AGREED TO THE RETURNING OFFICER'S SUGGESTION TO REMOVE THE TRUCK DRIVER'S NAME FROM THE VOTERS' LIST PURSUANT TO THE PROVISIONS OF SECTION 7(4) OF THE ACT AND ACCORDINGLY THE VOTERS' LIST WAS REVISED TO REMOVE THE NAME OF THE TRUCK DRIVER. THE PARTIES ALSO SIGNED THE CERTIFICATION OF CONDUCT OF ELECTION. AFTER THE REMOVAL OF THE TRUCK DRIVER'S NAME FROM THE VOTERS' LIST THE NUMBER OF NAMES REMAINING ON THE REVISED VOTERS' LIST WAS 131. ONE HUNDRED AND THIRTY-ONE PERSONS CAST BALLOTS AND OF THESE PERSONS 66 MARKED THEIR BALLOT IN FAVOUR OF THE APPLICANT, 64 MARKED THEIR BALLOT IN OPPOSITION TO THE APPLICANT AND 1 BALLOT WAS SPOILED. ON THE FACE OF THE RETURNING OFFICER'S REPORT A BARE MAJORITY OF THE 131 PERSONS HAD MARKED THEIR BALLOTS IN FAVOUR OF THE APPLICANT.

4. SUBSEQUENT TO THE TAKING OF THE VOTE THE RESPONDENT FILED NOTICE OF OBJECTION TO THE REPORT OF THE RETURNING OFFICER, AND TOOK THE POSITION THAT THE TRUCK DRIVER'S NAME SHOULD NOT HAVE BEEN REMOVED FROM THE REVISED VOTERS' LIST. IF THE TRUCK DRIVER'S NAME REMAINED ON THE REVISED VOTERS' LIST, THE VOTERS' LIST WOULD THEN STAND AT 132 AND ACCORDINGLY, EXACTLY FIFTY PER CENT OF THE BALLOTS OF THOSE ELIGIBLE TO VOTE WOULD HAVE BEEN CAST IN FAVOUR OF THE APPLICANT AND THE APPLICANT'S APPLICATION WOULD ACCORDINGLY BE DISMISSED SINCE A MAJORITY WOULD NOT HAVE VOTED IN FAVOUR OF THE APPLICANT.

5. SECTION 7(4) OF THE ACT READS AS FOLLOWS:

"7.(4) IN DETERMINING THE NUMBER OF ELIGIBLE VOTERS FOR THE PURPOSE OF SUBSECTION 3, EMPLOYEES WHO ARE ABSENT FROM WORK DURING VOTING HOURS AND WHO DO NOT CAST THEIR BALLOTS SHALL NOT BE COUNTED AS ELIGIBLE."

6. IT IS READILY APPARENT THAT THE PARTIES HAVE NO AUTHORITY UNDER SECTION 7(4) TO ENTER INTO AN AGREEMENT TO REMOVE THE NAME OF AN EMPLOYEE WHO WAS NOT ABSENT FROM WORK DURING VOTING HOURS. TO DO SO WOULD BE TO DISFRANCHISE AN EMPLOYEE WHO DID NOT VOTE. ON THE OTHER HAND IT MAY WELL HAVE BEEN THAT HAD THE POLL OPENED AS ORIGINALLY SCHEDULED THE TRUCK DRIVER WOULD HAVE VOTED AND WOULD HAVE VOTED IN FAVOUR OF THE APPLICANT UNION IN WHICH EVENT THE RESULT OF THE VOTE WOULD NOT HAVE BEEN CHANGED. HOWEVER, IF HE VOTED AGAINST THE APPLICANT UNION OR DELIBERATELY REFRAINED FROM VOTING IN ORDER TO SHOW HIS DESIRE NOT TO SUPPORT THE UNION, THE UNION WOULD HAVE LOST THE VOTE. AT THIS STATE OF THE PROCEEDINGS IT WOULD BE VERY UNFAIR TO ATTEMPT TO ASCERTAIN THE WISHES OF ONE EMPLOYEE IN CIRCUMSTANCES WHERE THE RESULTS OF THE REPRESENTATION VOTE WOULD BE DETERMINED BY THAT EMPLOYEE. NOT ONLY WOULD SUCH PROCEDURE DESTROY THE SECRECY OF HIS BALLOT BUT THE PRESSURES GENERATED BY SUCH A PROCEDURE WOULD LIKELY TEND TO PROHIBIT THE EMPLOYEE FROM INDICATING HIS TRUE WISHES. SINCE THE TRUCK DRIVER WAS, IN FACT, AT WORK DURING VOTING HOURS THERE IS NOTHING IN THE PROVISIONS OF SECTION 7(4) OF THE LABOUR RELATIONS ACT WHICH WOULD ENTITLE THE PARTIES TO REMOVE HIM FROM THE VOTERS' LIST.

7. WHILE NORMALLY A PARTY SHOULD NOT BE PERMITTED TO UNILATERALLY RESCIND AN AGREEMENT VOLUNTARILY ENTERED INTO, THERE IS SOME DOUBT IN THE MIND OF THE BOARD WHETHER THE PRESENT AGREEMENT WAS VOLUNTARY OR WHETHER IT WAS OBTAINED THROUGH UNDUE INFLUENCE INNOCENTLY BROUGHT ABOUT BY THE ACTIONS OF THE BOARD'S RETURNING OFFICER. THE BOARD REGRETS THE PROBLEM THAT HAS BEEN INNOCENTLY CREATED IN THIS CASE. THE BOARD FINDS ON THE FACTS IN THIS CASE THAT WHILE THERE WAS A MISUNDERSTANDING AS TO WHAT THEIR RIGHTS WERE THERE WAS NO IMPROPRIETY ON THE PART OF THE RETURNING OFFICER OR THE PARTIES WITH RESPECT TO THE AGREEMENT. HOWEVER, THAT MAY BE THE BOARD IS OF OPINION THAT THE ONLY PROPER WAY TO RESOLVE THE PROBLEM FACED BY THE PARTIES AND THE BOARD IN THESE CIRCUMSTANCES AND TO PREVENT THE RESULT OF THE VOTE FROM BEING DETERMINED BY ONE PERSON WHO HAS BEEN IDENTIFIED, THE PROPER PROCEDURE WOULD BE TO DIRECT A NEW REPRESENTATION VOTE BE TAKEN.

8. THE BOARD THEREFORE DIRECTS THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

"ALL EMPLOYEES OF THE RESPONDENT AT SEAFORTH, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK."

9. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

16450-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. MOTORCO EMPLOYEES (PLANT THREE) CREDIT UNION LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: SEPTEMBER 17, 1969.

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2. THE BOARD FURTHER FINDS THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD HAS CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER APPOINTED IN THIS MATTER DATED AUGUST 22ND, 1969, RELATING TO THE DUTIES AND RESPONSIBILITIES OF ANN PAPINEAU. THE BOARD HAS ALSO CONSIDERED THE WRITTEN REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT.

4. ANN PAPINEAU IS THE SENIOR GIRL IN THE OFFICE. ALTHOUGH IN THE ABSENCE OF THE OFFICE MANAGER SHE IS INFORMALLY IN CHARGE OF THE OTHER FOUR GIRLS IN THE OFFICE SHE HAS NO REAL AUTHORITY TO DISCIPLINE THEM. MOREOVER SHE HAS NO AUTHORITY WHATSOEVER OVER THE HIRING AND DISCHARGE OF EMPLOYEES. SHE CAN SIGN CHEQUES. ANOTHER GIRL IN THE BARGAINING UNIT, HOWEVER, ALSO HAS THIS AUTHORITY. THE SOLE FUNCTION WHICH SHE HAS THAT NO OTHER GIRL IN THE OFFICE HAS IS THE AUTHORITY TO REJECT AND ACCEPT LOAN REQUESTS UP TO TWO THOUSAND DOLLARS. AN APPLICANT FOR A LOAN, HOWEVER, WHO IS DISSATISFIED WITH HER DECISION MAY APPEAL TO THE CREDIT COMMITTEE. SHE DOES NOT PARTICIPATE IN CREDIT UNION POLICY MAKING AND ANY LOAN ABOVE TWO THOUSAND DOLLARS MUST BE CONSIDERED BY THE CREDIT COMMITTEE.

5. DESPITE THE LIMITATIONS REFERRED TO ABOVE, ANN PAPINEAU DOES HAVE INDEPENDENT DISCRETION TO ACCEPT OR REJECT LOAN REQUESTS. FOR THIS REASON THE BOARD FINDS THAT SHE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 29, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER O. HODGES: SEPTEMBER 17, 1969.

I DISSENT.

I WOULD INCLUDE ANN PAPINEAU IN THE BARGAINING UNIT.

16481-69-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. CANRON LIMITED (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: NO ONE APPEARING FOR THE APPLICANT; G.S.P. FERGUSON, F. A. COLLIER, J. H. JONES AND J. J. BLEAN FOR THE RESPONDENT; R. RUSSELL AND D. TYNER FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 12, 1969.

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3. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES AT THE RESPONDENT'S ELECTRICAL DIVISION IN NAPANEE. THE RESPONDENT HAS SUBMITTED THAT THE APPLICATION IS PREMATURE ON THE GROUNDS THAT THE RESPONDENT HAS ONLY RECENTLY COMMENCED ITS OPERATIONS AT NAPANEE. AS OF JULY 25TH, 1969, THE DATE THE APPLICATION WAS MADE ONLY THIRTY-FIVE OF AN ANTICIPATED WORK FORCE OF ONE HUNDRED AND TWENTY PERSONS WERE EMPLOYED BY THE RESPONDENT AT NAPANEE.

4. THE RESPONDENT COMMENCED ITS OPERATIONS AT NAPANEE IN THE MONTH OF MAY 1969. AS OF THE DATE OF THE INSTANT APPLICATION THE PLANT WAS WORKING AT ONE TENTH ITS PLANNED CAPACITY AND EMPLOYED THIRTY-FIVE PERSONS ON A TWO SHIFT OPERATION. THE RESPONDENT HAS ON ORDER TWELVE PIECES OF EQUIPMENT WHICH HAVE NOT AS YET BEEN DELIVERED OR INSTALLED. THE RESPONDENT HAS CONFIRMED THE DATE OF DELIVERY OF TWO OF THE MAJOR PIECES OF EQUIPMENT ON OR BEFORE OCTOBER 15TH BY WHICH DATE THE RESPONDENT EXPECTS TO DOUBLE THE PRESENT NUMBER OF EMPLOYEES.

5. AS OF THE DATE OF THE APPLICATION THE RESPONDENT HAD IN ITS EMPLOY THIRTY-FIVE PERSONS WITH RESPECT TO WHOM THE INTERVENER SUBMITTED MEMBERSHIP EVIDENCE ON BEHALF OF TWENTY-TWO. WHILE THERE WERE CERTAIN DEFECTS WITH RESPECT TO TWO OF THE INTERVENER'S MEMBERSHIP CARDS THERE WAS NO QUESTION CONCERNING TWENTY OF THE MEMBERSHIP CARDS SUBMITTED BY THE INTERVENER. IN THESE CIRCUMSTANCES THE INTERVENER WOULD BE ENTITLED TO OUTRIGHT CERTIFICATION SUBJECT TO THE QUESTION OF "BUILD-UP".

6. ON THE EVIDENCE BEFORE US HOWEVER, WE ARE SATISFIED THAT A BUILD-UP IS TAKING PLACE IN THE WORK FORCE OF THE RESPONDENT'S PLANT AT NAPANEE AND THAT THE RESPONDENT HAS DEFINITE PLANS FOR AN IMMINENT INCREASE IN THE NUMBER OF EMPLOYEES WHICH WILL TAKE PLACE WITHIN THE NEXT SIX WEEKS. IF THE PLANNED INCREASE TAKES PLACE AS PREDICTED BY THE RESPONDENT AT THE END OF THE SIX WEEK PERIOD, MORE THAN FIFTY PER CENT OF THE RESPONDENT'S ANTICIPATED WORK FORCE AT NAPANEE WILL BE EMPLOYED.

7. ON THE BASIS OF THE CRITERIA THAT HAS BEEN APPLIED IN PREVIOUS CASES THE BOARD IS OF OPINION THAT THE PLANNED IMMINENT INCREASE IN THE WORK FORCE OF THE RESPONDENT IS NOT SUFFICIENTLY ADVANCED TO ENTITLE THE INTERVENER TO OUTRIGHT CERTIFICATION AT THE PRESENT TIME (SEE EMIL FRANT AND PETER WASELOVICH CASE, (1957) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, PARA. 16,057, C.L.S. 76-539; ESSEX WIRE CORPORATION LIMITED CASE, BOARD FILE No. 10906-65-R; ALLIED WEAVING (CANADA) LIMITED CASE, BOARD FILE No. 9453-64-R).

8. THE BOARD ACCORDINGLY DIRECTS THAT THE RESPONDENT REPORT TO THE BOARD IN WRITING ON OCTOBER 1ST AND AGAIN ON OCTOBER 15TH AND ADVISE THE BOARD OF THE TOTAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AS OF THOSE DATES. IF THE BUILD-UP PROGRESSES AS PREDICTED BY THE RESPONDENT, A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT WHEN A MAJORITY OF EMPLOYEES IN THE PLANNED BARGAINING HAVE BEEN EMPLOYED. IF HOWEVER THE BUILD-UP DOES NOT PROCEED AS THE RESPONDENT HAS PLANNED THE BOARD MAY DEEM IT ADVISABLE TO CERTIFY THE INTERVENER WITHOUT TAKING A REPRESENTATION VOTE. THE RESPONDENT IS FURTHER

DIRECTED TO ADVISE THE BOARD, ON THE DATES REFERRED TO ABOVE, OF THE NAMES AND CLASSIFICATIONS OF PERSONS IT PURPOSES SHOULD BE EXCLUDED FROM THE BARGAINING UNIT WHO ARE EMPLOYED IN THE ENGINEERING DEPARTMENT OR AS ASSISTANT FOREMEN.

16541-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (APPLICANT) V. BAYFIELD SERVICES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. J. PETER FOUCAULT, M. ROSS, R. KOSKIE FOR THE APPLICANT; DONALD B. ORD FOR THE RESPONDENT; RONALD HUNTER, DELFORD BUSHEY, FRANK LAMORE AND LORNE BUSHEY FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: SEPTEMBER 4, 1969.

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3. THE BOARD FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF HARRISON, BURTON, SHAWANAGA, BURPEE, CARLING, FERGUSON, McDUGAL, COWPER, FOLEY AND CONGER IN THE DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT CONTAINS THE NAMES OF FIVE PERSONS WHO ARE INCLUDED IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR THREE OF THE FIVE PERSONS. THERE WAS ALSO FILED WITH THE BOARD SIX INDIVIDUAL STATEMENTS OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION. STATEMENTS WERE FILED BY THE THREE PERSONS CLAIMED IN MEMBERSHIP BY THE APPLICANT. ACCORDINGLY, IF THE BOARD WERE TO GIVE WEIGHT TO THESE DOCUMENTS THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE FIFTY-FIVE PER CENT OF THE PERSONS IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. THE BOARD THEREFORE MADE ITS USUAL INQUIRY INTO THE ORIGINATION AND PREPARATION OF THE DOCUMENTS.

5. THE EVIDENCE IS THAT FORM 52 (THE GREEN SHEET) WAS POSTED AT THE PREMISES OF THE RESPONDENT. ON THE MORNING OF AUGUST 18TH, WHEN THE EMPLOYEES REPORTED FOR WORK, DONALD ORD,

THE OWNER OF THE RESPONDENT BUSINESS, READ THE FORM 52 TO HIS EMPLOYEES. HE THEN ADVISED THEM THAT THOSE WHO WANTED THE UNION TO REPRESENT THEM COULD PROCEED TO WORK AND THAT THOSE WHO WANTED TO FILE A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION COULD PREPARE INDIVIDUAL DOCUMENTS WHICH HE WOULD MAIL TO THE BOARD. ALL OF THE EMPLOYEES PREPARED STATEMENTS EXPRESSING THEIR OPPOSITION TO THE UNION WHICH WERE HANDED OVER TO ORD. ORD ATTACHED THE STATEMENTS TO THE REPLY FORMS AND MAILED THEM TO THE BOARD.

6. THE EVIDENCE INDICATES THAT AT LEAST SOME OF THE EMPLOYEES HAVE DIFFICULTY UNDERSTANDING THE FORM 52 DUE TO THEIR LIMITED READING ABILITY. IN THIS SITUATION IT WAS REASONABLE FOR ORD TO READ THE FORM 52 TO THEM AND EXPLAIN ITS MEANING. THE MANNER IN WHICH THE STATEMENTS WERE PREPARED AND SENT TO THE BOARD, HOWEVER, WAS SUCH THAT ORD WAS BOUND TO HAVE FULL KNOWLEDGE OF WHICH OF HIS EMPLOYEES WERE SUPPORTERS OF THE APPLICANT. THE BOARD HAS LONG RECOGNIZED THE HIGHLY RESPONSIVE NATURE OF THE RELATIONSHIP THAT EXISTS BETWEEN AN EMPLOYER AND HIS EMPLOYEES AND THE NATURAL DESIRE OF EMPLOYEES TO TRY TO IDENTIFY THEMSELVES WITH THE WISHES OF THEIR EMPLOYER. HAVING REGARD TO THIS FACT AND THE CIRCUMSTANCES UNDER WHICH THE STATEMENTS OF DESIRE WERE PREPARED, WE ARE UNABLE TO ACCEPT THEM AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SUPPORT THEM. ACCORDINGLY WE FIND THAT THE STATEMENTS OF DESIRE DO NOT SO QUALIFY THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 18TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16560-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. FROST STEEL & WIRE COMPANY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ALLAN MACISAAC FOR THE APPLICANT;
B. H. STEWART AND RONALD SMITH FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 23, 1969.

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4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN BOARD CONSTRUCTION GEOGRAPHIC AREA No. 8. BOTH THE APPLICANT AND THE RESPONDENT SUGGESTED THE EXCLUSION OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD FROM THE BARGAINING UNIT. THE BOARD ADVISED THE PARTIES AT THE HEARING IN THIS MATTER THAT IT WAS THE CONSISTENT PRACTICE OF THE BOARD TO INCLUDE STUDENTS IN ANY BARGAINING UNIT FOUND TO BE APPROPRIATE UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT.

5. THE BUSINESS IN WHICH THE RESPONDENT IS ENGAGED IS THE SELLING AND INSTALLATION OF CHAIN LINK FENCES.

6. THE BOARD ACCORDINGLY FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE INSTALLATION AND/OR ERECTION OF FENCES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (SEE LUNDY FENCE COMPANY LIMITED CASE, BOARD FILE 16351-69-R, OLRB M.R. JULY 1969).

7. THE ORIGINAL LIST FILED BY THE RESPONDENT CONTAINING THE NAMES OF PERSONS IN ITS EMPLOY IN THE BARGAINING UNIT ON AUGUST 13, 1969, THE DATE OF THE MAKING OF THE APPLICATION, WAS FIFTY-EIGHT. THIS LIST, HOWEVER, DID NOT CONTAIN THE NAMES OF STUDENTS WHO WERE EMPLOYED DURING THE SCHOOL VACATION PERIOD AS OF THAT DATE. AT THE REQUEST OF THE BOARD THE RESPONDENT SUBSEQUENTLY FILED AN ADDITIONAL LIST OF NINETEEN PERSONS WHO WERE EMPLOYED AS STUDENTS ON THE DATE OF APPLICATION. ACCORDING TO THE RESPONDENT, THE TOTAL LIST OF EMPLOYEES IN THE BARGAINING UNIT AT THE RELEVANT TIME WAS SEVENTY-SEVEN.

8. THE APPLICANT CHALLENGED THE REVISED LIST FILED BY THE RESPONDENT. THE BOARD ACCORDINGLY APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST CONTAINING THE NAMES OF THE EMPLOYEES OF THE RESPONDENT FILED WITH THE BOARD.

THE PARTIES RECORDED AN AGREEMENT WITH THE EXAMINER THAT THE NAMES OF TWELVE PERSONS BE REMOVED FROM THE LIST. THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE OF APPLICATION THEREFORE WAS 65.

9. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 33 OF THE PERSONS WHOSE NAMES APPEAR ON THE LIST. NO FINANCIAL SACRIFICE, I.E. A ONE DOLLAR PAYMENT, IS INDICATED ON THE APPLICATIONS FOR MEMBERSHIP OR RECEIPTS FOR TWO OF THESE PERSONS. THE EVIDENCE OF MEMBERSHIP FOR THESE PERSONS ACCORDINGLY DOES NOT MEET THE BOARD'S REQUIREMENTS. THE APPLICANT THEREFORE HAS EVIDENCE OF MEMBERSHIP WHICH MEETS THE BOARD'S STANDARDS FOR 31 PERSONS ON THE LIST.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 19, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

16570-69-R: THE BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL #30 (APPLICANT) V. J. D. COAD CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: MIKE QUESNEL FOR THE APPLICANT; PETER JOHN BRUNNER, J. C. COAD AND BRUCE J. YOUNG FOR THE RESPONDENT; EDWARD VANDERKLOET FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 12, 1969.

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5. THE APPLICANT IS APPLYING FOR CERTIFICATION FOR A UNIT COMPOSED OF ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC CONSTRUCTION AREA No. 12.

6. THE INTERVENER IS PARTY TO A COLLECTIVE AGREEMENT EFFECTIVE FROM SEPTEMBER 1ST, 1968, UNTIL AUGUST 31ST, 1969. THIS AGREEMENT COVERS ALL CARPENTERS AND CARPENTERS' APPRENTICES, BRICKLAYERS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC CONSTRUCTION AREA No. 12. THE INTERVENER SUBMITS THAT THE APPLICANT SHOULD NOT BE PERMITTED TO CARVE OUT A CONSTRUCTION CRAFT UNIT OF BRICKLAYERS FROM THE EXISTING UNIT. IN SUPPORT OF THIS SUBMISSION THE INTERVENER REFERRED TO THE CANADA FOUNDRIES AND FORGING LTD. CASE, 61 CLLC 939. IN THAT CASE THE CANADIAN UNION OF OPERATING ENGINEERS WAS SEEKING TO CARVE OUT A CRAFT UNIT OF STATIONARY ENGINEERS AND HELPERS FROM AN INDUSTRIAL "ALL EMPLOYEE" UNIT REPRESENTED BY ANOTHER TRADE UNION. THE BOARD FOUND THAT THE STATIONARY ENGINEERS HAD BEEN EFFECTIVELY REPRESENTED OVER A PERIOD OF YEARS BY THE TRADE UNION REPRESENTING THE OVER-ALL UNIT. IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 6(2) OF THE ACT THE BOARD FOUND THE UNIT PROPOSED BY THE CANADIAN UNION OF OPERATING ENGINEERS WAS NOT APPROPRIATE IN THE CIRCUMSTANCES AND DISMISSED THE APPLICATION.

7. THE SITUATION IN THE INSTANT APPLICATION IS READILY DISTINGUISHABLE FROM THE ABOVE CASE. IN APPLICATIONS FOR CERTIFICATION MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS FOR "ALL EMPLOYEE" UNITS THE BOARD HAS FOUND THE APPROPRIATE UNIT TO BE ONE CONFINED TO THE CONSTRUCTION TRADES ON THE JOB SITE OR SITES OF THE EMPLOYER CONCERNED AS OF THE DATE OF THE MAKING OF THE APPLICATION. (A.K. PENNER & SONS CASE, OLRB, M.R. OCT. 1966, 493) IN FACT, THE PRESENT APPLICANT WAS ORIGINALLY CERTIFIED AS BARGAINING AGENT FOR ALL BRICKLAYERS AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE GEOGRAPHIC AREA WITH WHICH WE ARE HERE CONCERNED ON THAT BASIS. (THE CARPENTERS WERE SUBSEQUENTLY INCLUDED IN THE BARGAINING UNIT BY THE PARTIES.) THE BOARD HAS FOUND SUCH UNITS TO BE APPROPRIATE UNDER SECTION 6(1) RATHER THAN SECTION 6(2) OF THE ACT. (SEE NADECO LIMITED CASE, OLRB, M.R. MAY 1968, 228 AND MAURICE H. ROLLINS CONSTRUCTION LTD. CASE, OLRB, M.R. JUNE 1968, 242.) THAT IS TO SAY, THE UNIT FOUND TO BE APPROPRIATE IS NOT A CRAFT UNIT PER SE BUT A UNIT COMPOSED OF THE CONSTRUCTION CRAFTS ON THE JOB.

8. WE FIND NO BASIS FOR DECLINING TO CERTIFY A CONSTRUCTION CRAFT TRADE UNION FOR THE TRADE WHICH IT NORMALLY REPRESENTS WITHIN

THE INDUSTRY, NOTWITHSTANDING THE RESULT IS TO REMOVE THAT TRADE FROM A UNIT COMPOSED OF A COMPOSITE OF CONSTRUCTION TRADES. AS HAS BEEN STATED THE BOARD HAS ALWAYS FOUND EACH CONSTRUCTION CRAFT TO BE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING UNDER SECTION 6(1) OF THE ACT.

9. THE BOARD ACCORDINGLY FINDS THAT ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONE MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE RESPONDENT FILED A LIST OF EMPLOYEES CONTAINING THE NAMES OF EIGHT PERSONS ALL OF WHOM ARE INCLUDED IN THE BARGAINING UNIT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR ALL EIGHT EMPLOYEES. MORE PARTICULARLY THE APPLICANT FILED THREE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS AND FIVE CERTIFICATES OF MEMBERSHIP. ALL THREE OF THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS ARE IN THE NAME OF THE PARENT INTERNATIONAL UNION AND NOT IN THE NAME OF THE LOCAL. WHILE THE BOARD HAS HELD THAT EVIDENCE OF MEMBERSHIP IN A LOCAL UNION IS EVIDENCE OF MEMBERSHIP IN THE PARENT UNION OF THE PARTICULAR LOCAL, IT HAS NEVER HELD THAT EVIDENCE OF MEMBERSHIP IN THE PARENT IS PER SE EVIDENCE OF MEMBERSHIP IN A PARTICULAR LOCAL. (MILSON FLOORS LIMITED CASE, OLRB, M.R. SEPT. 1966, 419.) FURTHER, TWO OF THE CERTIFICATES OF MEMBERSHIP INDICATE MEMBERSHIP IN LOCAL No. 10 RATHER THAN THE APPLICANT LOCAL No. 30. THE BOARD HAS HELD THAT EVIDENCE OF MEMBERSHIP IN A LOCAL TRADE UNION OTHER THAN THE APPLICANT LOCAL IS NOT SATISFACTORY EVIDENCE OF MEMBERSHIP. (O. J. GAFFNEY LIMITED, OLRB, M.R. DEC. 1965) IN THE RESULT THE APPLICANT HAS ONLY SUBMITTED EVIDENCE OF MEMBERSHIP FOR THREE PERSONS IN THE BARGAINING UNIT WHICH MEETS THE BOARD'S REQUIREMENTS.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 21ST, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. THE APPLICATION IS THEREFORE DISMISSED.

16606-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) V. KITCHENS OF SARA LEE (CANADA) LTD.
(RESPONDENT) V. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL
UNION OF AMERICA LOCAL 264 (INTERVENER #1) V. INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2).

DECISION OF THE BOARD: SEPTEMBER 9, 1969.

1. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION (HEREINAFTER
CALLED RETAIL WHOLESALE) AND INTERNATIONAL UNION OF OPERATING ENGI-
NEERS, LOCAL 796 (HEREINAFTER CALLED LOCAL 796) HAVE EACH APPLIED TO
BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RES-
PONDENT WHO ARE CURRENTLY REPRESENTED BY BAKERY & CONFECTIONERY
WORKERS' INTERNATIONAL UNION OF AMERICA LOCAL 264 (HEREINAFTER
CALLED LOCAL 264), AND A REPRESENTATION VOTE HAS BEEN REQUESTED.

2. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS
OF LOCAL 796 AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN
FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN VOTING
CONSTITUENCY #1 HEREINAFTER DESCRIBED WERE MEMBERS OF LOCAL 796 AT
THE TIME THE APPLICATION WAS MADE.

3. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE
BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOT-
ING CONSTITUENCY HEREINAFTER REFERRED TO AS VOTING CONSTITUENCY #1:

ALL STATIIONARY ENGINEERS AND PERSONS PRIMARILY
ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE
RESPONDENT IN THE TOWNSHIP OF CHINGACOUSY, SAVE
AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE
THE RANK OF CHIEF ENGINEER.

4. IT FURTHER APPEARS TO THE BOARD THAT ON THE EXAMINATION
OF THE RECORDS OF RETAIL WHOLESALE AND THE RECORDS OF THE RESPON-
DENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF
THE RESPONDENT IN VOTING CONSTITUENCY #2 HEREINAFTER DESCRIBED
WERE MEMBERS OF RETAIL WHOLESALE AT THE TIME THE APPLICATION WAS
MADE.

5. THE BOARD FURTHER DIRECTS THAT A PRE-HEARING REPRESENTA-
TION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLO-
ING VOTING CONSTITUENCY HEREINAFTER REFERRED TO AS VOTING CONSTITU-
ENCY #2:

ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP
OF CHINGACOUSY SAVE AND EXCEPT FOREMEN, PERSONS
ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF, RETAIL CLERKS PERSONS REGULARLY EMPLOYED

FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK
AND STUDENTS EMPLOYED DURING THE SCHOOL
VACATION PERIOD.

6. ALL EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #1 AND VOTING CONSTITUENCY #2 ON AUGUST 29TH, 1969, WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN AUGUST 29TH, 1969 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE GIVEN A CHOICE BETWEEN INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 AND BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 IN VOTING CONSTITUENCY #1.

8. VOTERS WILL BE GIVEN A CHOICE BETWEEN RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AND BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA LOCAL 264 IN VOTING CONSTITUENCY #2.

9. THE BOARD DIRECTS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE TOWNSHIP OF CHINGACOUSY WILL BE ENTITLED TO VOTE IN VOTING CONSTITUENCY #2 AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

10. THE BOARD FURTHER DIRECTS THAT THE BALLOT BOXES CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTES IN VOTING CONSTITUENCY #1 AND VOTING CONSTITUENCY #2 SHALL BE SEALED AND THE BALLOTS SHALL NOT BE COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

11. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTES IN THIS MATTER THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE APPROPRIATENESS OF THE UNIT PROPOSED BY INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796.

12. WHILE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES CURRENTLY REPRESENTED BY LOCAL 264, LOCAL 796 ONLY SEEKS TO REPRESENT ITS CRAFT BARGAINING UNIT OF STATIONARY ENGINEERS. BOTH RETAIL WHOLESALE AND LOCAL 796 HOWEVER SEEK TO BE CERTIFIED AS BARGAINING AGENT FOR THE STATIONARY ENGINEERS. IN THESE CIRCUMSTANCES AND SUBJECT TO A DETERMINATION AS TO WHETHER THE UNIT PROPOSED BY LOCAL 796 IS APPROPRIATE FOR COLLECTIVE BARGAINING UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT, THE STATIONARY ENGINEERS AND THEIR HELPERS EMPLOYED BY THE RESPONDENT WILL BE

ENTITLED TO VOTE IN THE VOTING CONSTITUENCY OF STATIONARY ENGINEERS AS WELL AS IN THE SECOND VOTING CONSTITUENCY OF ALL EMPLOYEES. THE EMPLOYEES IN VOTING CONSTITUENCY #1 WHICH WILL INCLUDE ONLY THE STATIONARY ENGINEERS AND THEIR HELPERS WILL BE GIVEN A CHOICE BETWEEN LOCAL 796 AND LOCAL 264. THE STATIONARY ENGINEERS WILL ALSO BE PERMITTED TO CAST A SEGREGATED BALLOT IN VOTING CONSTITUENCY #2 WHICH WILL INCLUDE ALL EMPLOYEES OF THE RESPONDENT CURRENTLY REPRESENTED BY LOCAL 264. IF THE BOARD FINDS THAT THE UNIT PROPOSED BY LOCAL 796 IS APPROPRIATE FOR COLLECTIVE BARGAINING AND THE MAJORITY OF STATIONARY ENGINEERS AND HELPERS VOTE IN FAVOUR OF LOCAL 796, THE SEGREGATED BALLOTS CAST BY SUCH EMPLOYEES IN VOTING CONSTITUENCY #2 WILL NOT BE COUNTED. IF HOWEVER, THE MAJORITY OF THE STATIONARY ENGINEERS AND HELPERS IN VOTING CONSTITUENCY #1 VOTE IN FAVOUR OF LOCAL 264, THE SEGREGATED BALLOTS CAST BY THE STATIONARY ENGINEERS AND HELPERS IN VOTING CONSTITUENCY #2 WILL THEN BE COUNTED IN THAT VOTING CONSTITUENCY.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

16639-69-R: PRINCE EDWARD ELECTRICAL WORKERS' ASSOCIATION (APPLICANT) v. PROCTOR-LEWYT DIVISION OF S C M (CANADA) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: JACK H. WARD FOR THE APPLICANT,
D. CHURCHILL-SMITH AND J. V. FINDLAY FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 30, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE APPLICANT IN THIS MATTER ADDUCED EVIDENCE TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THIS EVIDENCE MAY BE SUMMARIZED AS FOLLOWS. A MEETING WAS HELD ON JUNE 25, 1969 OF SOME FIFTY-ONE PERSONS EMPLOYED BY THE RESPONDENT AT WHICH IT WAS DECIDED THAT THE RESPONDENT'S EMPLOYEES SHOULD FORM THEIR OWN ASSOCIATION RATHER THAN ATTEMPT TO BARGAIN THROUGH ONE OF THE ESTABLISHED TRADE UNIONS. A DRAFT CONSTITUTION WAS STUDIED AND DISCUSSED BY THE PERSONS PRESENT AND CERTAIN AMENDMENTS WERE PROPOSED. A FURTHER MEETING WAS SCHEDULED FOR JULY 23, 1969 AT WHICH THE FINAL DRAFT OF THE PROPOSED CONSTITUTION WOULD BE CONSIDERED.

3. ON JULY 23, 1969, A SECOND ORGANIZATIONAL MEETING WAS HELD BY CERTAIN PERSONS EMPLOYED BY THE RESPONDENT. AT THIS MEETING THE AMENDED CONSTITUTION WAS DISCUSSED AND ADOPTED AS READ. IMMEDIATELY FOLLOWING THE ADOPTION OF THE CONSTITUTION OFFICERS WERE ELECTED BY THE PERSONS IN ATTENDANCE AT THE MEETING. FOLLOWING THE ELECTION OF OFFICERS A DISCUSSION WAS HELD AT WHICH THE MEETING WAS ADVISED OF THE PROCEDURE THAT WOULD BE FOLLOWED IN MAKING AN APPLICATION FOR CERTIFICATION TO THE ONTARIO LABOUR RELATIONS BOARD. THE EXECUTIVE WAS AUTHORIZED TO MAKE AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR THE RESPONDENT'S EMPLOYEES. AFTER DEALING WITH OTHER INCIDENTAL BUSINESS THE MEETING WAS ADJOURNED. UP TO THIS POINT NO PERSON HAD BEEN ADMITTED INTO MEMBERSHIP PURSUANT TO THE PROVISIONS OF THE CONSTITUTION THAT HAD BEEN ADOPTED.

4. THE FIRST APPLICATION FOR MEMBERSHIP IN THE APPLICANT ASSOCIATION WAS SIGNED ON AUGUST 12, 1969. THERE HAS BEEN NO MEMBERSHIP MEETING SINCE JULY 23RD AT WHICH THE APPLICANT'S MEMBERS WOULD HAVE AN OPPORTUNITY TO RATIFY THE CONSTITUTION THAT HAD BEEN ADOPTED AT THE JULY 23RD MEETING. IT IS THEREFORE APPARENT THAT AT THE TIME OF THE JULY 23RD MEETING AT WHICH THE OFFICERS WERE ELECTED NO PERSON WAS A MEMBER OF THE APPLICANT ASSOCIATION.

5. IT IS TO BE NOTED THAT ARTICLE V OF THE CONSTITUTION PROVIDES THAT "ALL OFFICERS OF THE ASSOCIATION SHALL BE MEMBERS OF THE ASSOCIATION IN GOOD STANDING." ARTICLE VI OF THE CONSTITUTION, QUALIFICATIONS OF VOTERS, READS AS FOLLOWS:

6.01 ALL MEMBERS OF THE ASSOCIATION IN GOOD STANDING SHALL BE ELIGIBLE TO VOTE FOR THE ELECTION OF OFFICERS OF THE ASSOCIATION.

6. WHILE THE EVIDENCE CONCERNING THE PROCEDURAL STEPS TAKEN WITH RESPECT TO THE FORMATION OF THE APPLICANT IN THIS MATTER FAILED TO DISCLOSE ANY ADVERSE EVIDENCE WHICH WOULD PREVENT THIS BOARD FROM RECOGNIZING THE APPLICANT AS A TRADE UNION, IT MUST BE POINTED OUT THAT THE BOARD'S REQUIREMENTS HAVE NOT BEEN FULLY SATISFIED IN THAT THERE HAS BEEN NO MEETING OF MEMBERS OF THE APPLICANT TO RATIFY AND CONFIRM THE ACTIONS TAKEN AT THE JULY 23RD MEETING AT WHICH THE CONSTITUTION WAS ADOPTED AND THE OFFICERS WERE ELECTED. AN ASSOCIATION TO BE RECOGNIZED AS A TRADE UNION UNDER THE ACT CANNOT EXIST WITHOUT MEMBERS OTHERWISE IT IS WHAT IS KNOWN AS A "PAPER TRADE UNION". AT THE TIME THE CONSTITUTION WAS ADOPTED AND OFFICERS WERE ELECTED, THE APPLICANT HAD NO MEMBERS. IF THE RESPONDENT'S EMPLOYEES WHO WERE IN ATTENDANCE AT THE JULY 23RD MEETING HAD BECOME MEMBERS OF THE APPLICANT AT THAT

MEETING AND IF THE PERSONS ELECTED TO HOLD OFFICE IN THE APPLICANT HAD BEEN AMONG THOSE ENROLLED AS MEMBERS, THE BOARD WOULD HAVE TREATED THE SIGNING OF MEMBERS, THE ADOPTION OF THE CONSTITUTION AND THE ELECTION OF OFFICERS AS HAVING TAKEN PLACE SIMULTANEOUSLY. HOWEVER, SUCH ARE NOT THE FACTS OF THIS CASE. A CONSTITUTION MAY BE ADOPTED BY PERSONS WISHING TO FORM A TRADE UNION, HOWEVER, THE TRADE UNION COMMENCES ITS EXISTENCE AS A TRADE UNION WHEN THE ADOPTED CONSTITUTION IS RATIFIED AND CONFIRMED BY ITS MEMBERS. TO COMPLETE THE FORMATION OF THE APPLICANT AS A TRADE UNION IT IS THEREFORE NECESSARY FOR THE MEMBERSHIP TO RATIFY AND CONFIRM THE ACTIONS TAKEN AT THE EARLIER MEETINGS. UP TO THE TIME OF THE HEARING IN THIS CASE THIS HAD NOT BEEN DONE.

7. IN ADDITION, IF A RATIFICATION MEETING IS HELD, ANY DEFECT IN THE MEMBERSHIP EVIDENCE OF PERSONS WHO ATTEND THE RATIFICATION MEETING WILL BE CURED BY THEIR RATIFICATION VOTE. HOWEVER, IF ANY OF THE PERSONS FOR WHOM THE APPLICANT SUBMITTED MEMBERSHIP EVIDENCE FAIL TO ATTEND SUCH MEETING IT WOULD BE NECESSARY FOR THE APPLICANT TO OBTAIN A WRITTEN AFFIRMATION OF MEMBERSHIP FROM SUCH PERSONS TO ESTABLISH THAT THEY WISH TO BE MEMBERS OF THE APPLICANT SINCE THE APPLICANT CAN ONLY COME INTO EXISTENCE AT THE TIME THE RATIFICATION MEETING IS HELD. IN OTHER WORDS, THE MEMBERSHIP EVIDENCE PRESENTLY ON FILE BEFORE THE BOARD IS PREMATURE IN THAT THE APPLICANT ASSOCIATION CANNOT BE SAID TO HAVE COME INTO EXISTENCE UNTIL A RATIFICATION VOTE HAS BEEN TAKEN.

8. THE BOARD DEALT WITH A PROBLEM OF THE STATUS OF AN APPLICANT UNION IN HOTEL DIEU HOSPITAL, ST. CATHARINES CASE, BOARD FILE 16136-69-R, JUNE 24, 1969. IN THAT CASE, THE BOARD STATED AS FOLLOWS:

THIS IS AN APPLICATION FOR CERTIFICATION. AT THE HEARING IN THIS MATTER, THE APPLICANT CALLED EVIDENCE TO ESTABLISH THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE MINUTES OF THE FIRST MEETING WHICH WAS CALLED BY THE RESPONDENT'S EMPLOYEES EVIDENCED THE FACT THAT THE APPLICANT WAS CREATED BY THE ADOPTION OF THE CONSTITUTION BY THE THIRTY EMPLOYEES WHO WERE IN ATTENDANCE AT THAT MEETING. IMMEDIATELY FOLLOWING THE ADOPTION OF THE CONSTITUTION, ALL THIRTY EMPLOYEES WERE ENROLLED AS MEMBERS IN THE APPLICANT. THE MINUTES, HOWEVER, DO NOT DISCLOSE THAT THE MEMBERS SUBSEQUENTLY RATIFIED OR CONFIRMED THE CONSTITUTION AFTER BECOMING MEMBERS OF THE APPLICANT. WE ARE OF OPINION THAT WHERE A CONSTITUTION IS ADOPTED AT A MEETING AND THE PERSONS WHO ADOPTED THE CONSTITUTION BECAME THE MEMBERS OF THE

ORGANIZATION AT THE SAME MEETING AT WHICH THE CONSTITUTION IS ADOPTED, THE BOARD WOULD BE TAKING A VERY TECHNICAL POSITION IF IT DISTINGUISHED IN POINT OF TIME BETWEEN THE SIGNING OF MEMBERS AND THE ADOPTION OF THE CONSTITUTION. IF THE SIGNING OF MEMBERS AND THE ADOPTION OF THE CONSTITUTION TAKE PLACE AT THE SAME MEETING THEY SHOULD BE DEEMED TO HAVE TAKEN PLACE SIMULTANEOUSLY. IT THEREFORE IS OF LITTLE CONSEQUENCE WHETHER THE PERSONS IN ATTENDANCE AT THE MEETING ARE ENROLLED AS MEMBERS PRIOR TO THE ADOPTION OF THE CONSTITUTION OR WHETHER THE CONSTITUTION IS ADOPTED PRIOR TO THE ENROLMENT OF THE MEMBERS SO LONG AS THESE EVENTS TAKE PLACE AT THE SAME MEETING. IF EVERYTHING IS DONE AT THE ONE MEETING NO SUBSEQUENT CONFIRMATION OR RATIFICATION IS NECESSARY. HOWEVER, THIS SITUATION IS TO BE DISTINGUISHED FROM THE SITUATION WHERE PERSONS BECOME MEMBERS IN A NAMED ORGANIZATION AND SOME DAYS OR WEEKS ELAPSE BEFORE THE ORGANIZATION COMES INTO EXISTENCE BY THE ADOPTION OF THE CONSTITUTION. IN SUCH INSTANCE AT THE TIME THE MEMBERSHIP WAS SIGNED THERE WAS NO ORGANIZATION TO JOIN. SIMILARLY, IF A CONSTITUTION IS ADOPTED AT A MEETING AND SOME DAYS OR WEEKS ELAPSE BEFORE ANYONE BECOMES A MEMBER OF THE CONSTITUTED ORGANIZATION, SUBSEQUENT RATIFICATION BY THE MEMBERSHIP WOULD BE REQUIRED. HOWEVER, WHERE, AS IN THIS CASE, THE ORGANIZATION IS CONSTITUTED AND MEMBERS ARE ENROLLED AT THE SAME MEETING, NO SUBSEQUENT RATIFICATION OR CONFIRMATION OF THE CONSTITUTION OF THE ORGANIZATION IS REQUIRED AND THERE CAN BE NO QUESTION AS TO THE VALIDITY OF THE MEMBERSHIP EVIDENCE.

9. THE HOTEL DIEU HOSPITAL CASE REFERRED TO ABOVE MAY BE DISTINGUISHED FROM THE PRESENT CASE IN THAT THE ENROLMENT OF MEMBERS DID NOT TAKE PLACE UNTIL AFTER THE MEETING AT WHICH THE CONSTITUTION WAS PURPORTED TO HAVE BEEN ADOPTED AND THE OFFICERS ELECTED.

10. IT GOES WITHOUT SAYING THAT ONCE A TRADE UNION HAS COME INTO EXISTENCE FUTURE MEMBERS NEED NOT CONFIRM OR RATIFY THE EXISTING CONSTITUTION. HOWEVER, WHERE PERSONS SIGN APPLICATIONS FOR MEMBERSHIP IN AN ORGANIZATION WHICH HAS NOT COME INTO EXISTENCE AT THE TIME THE APPLICATIONS FOR MEMBERSHIP HAVE BEEN SIGNED, THERE MUST BE SOME SUBSEQUENT ACT CONSISTENT WITH MEMBERSHIP AFTER THE FORMATION OF THE ORGANIZATION HAS BEEN COMPLETED IN ORDER TO SATISFY THE BOARD'S MEMBERSHIP REQUIREMENTS. SUCH ACT CONSISTENT WITH MEMBERSHIP MAY BE THE PARTICIPATION IN A MEETING HELD TO RATIFY THE CONSTITUTION OR THE SIGNING OF AN AFFIRMATION OF MEMBERSHIP AFTER THE CONSTITUTION HAS BEEN RATIFIED. AT THE PRESENT TIME, HOWEVER, FOR THE REASONS SET OUT ABOVE, WE ARE IMPELLED TO FIND THAT AT THE TIME THIS APPLICATION WAS MADE THE NECESSARY PROCEDURAL STEPS HAD NOT BEEN COMPLETED TO BRING THE APPLICANT INTO EXISTENCE AS A TRADE UNION WITHIN THE MEANING OF THE ACT AND THE APPLICATION MUST THEREFORE BE DISMISSED.

16660-69-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V.
REG WILLSON PRINTING COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: TERENCE W. WILDE AND KENNETH E.
PEATLING FOR THE APPLICANT, W. AUSTIN STANLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 18, 1969.

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3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 12, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

6. AT THE END OF THE HEARING IN THIS MATTER, THE REPRESENTATIVE OF THE RESPONDENT REQUESTED THAT THE BOARD ADJOURN THIS HEARING FOR THREE OR FOUR WEEKS OWING TO THE ILLNESS OF R. K. WILLSON, THE PRESIDENT AND GENERAL MANAGER OF THE RESPONDENT. IT APPEARED THAT MR. WILLSON SUFFERED A MASSIVE CARDIAC OCCLUSION IN FEBRUARY 1969 AND HAD A RECURRENCE IN JULY. IT WAS ANTICIPATED THAT HE WOULD BE ABLE TO RETURN TO WORK SOME TIME IN OCTOBER OF THIS YEAR. IT WAS NOT ALLEGED THAT MR. WILLSON WAS POSSESSED OF EVIDENCE WHICH WAS ESSENTIAL TO THE RESPONDENT'S CONTESTATION OF THE CASE.

7. WHILE THE BOARD SYMPATHIZED WITH MR. WILLSON'S POSITION, THE BOARD ADVISED THE RESPONDENT'S REPRESENTATIVE AT THE HEARING THAT THE USUAL EVIDENCE SUPPLIED BY AN EMPLOYER IN A CERTIFICATION HEARING HAD BEEN SUPPLIED ON BEHALF OF THE RESPONDENT IN THIS MATTER. IN THE ABSENCE OF AN ALLEGATION THAT THERE WAS OTHER EVIDENCE WHICH WAS AVAILABLE WHICH ONLY MR. WILLSON COULD ADDUCE, THERE IS NO JUST CAUSE FOR GRANTING THE ADJOURNMENT REQUESTED. IT WAS POINTED OUT THAT SHOULD INFORMATION COME TO THE ATTENTION OF THE RESPONDENT WHICH WAS NOT AVAILABLE BECAUSE OF MR. WILLSON'S ABSENCE FROM THE HEARING DUE TO ILLNESS, SECTION 79(1) OF THE

LABOUR RELATIONS ACT WAS AVAILABLE TO THE RESPONDENT AND THE RESPONDENT COULD, WITHIN A REASONABLE TIME, REQUEST THE BOARD TO RECONSIDER ITS DECISION BASED ON SUCH NEW EVIDENCE. THE BOARD THEREFORE DENIED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT.

INDEXED ENDORSEMENTS - TERMINATION

16197-69-R: MARGARET DONOHUE, KAREN HANSON, EDNA MELANG, AND HELEN KENNEDY (APPLICANTS) V. LOCAL 893 HOTEL, MOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (RESPONDENT) V. SINCLAIR'S RESTAURANT (ATIKOKAN) LTD. (INTERVENER) V. EMPLOYEE (OBJECTOR).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: NO ONE APPEARING FOR THE APPLICANTS, WM. KOWALCHUK FOR THE RESPONDENT, ROY C. FILION FOR THE INTERVENER, NO ONE FOR THE OBJECTOR.

DECISION OF THE BOARD: SEPTEMBER 26, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION. THIS APPLICATION WAS MADE ON MAY 20, 1969. THE INTERVENER AND THE RESPONDENT HAD A BARGAINING RELATIONSHIP WHICH HAD BEEN ESTABLISHED SOME TEN YEARS PRIOR TO THIS APPLICATION. DURING THE COURSE OF BARGAINING FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT AND PRIOR TO CONCILIATION SERVICES BEING APPLIED FOR THE RESPONDENT UNION COMMENCED PICKETING THE INTERVENER'S RESTAURANT, AND ON MAY 26, 1969 THE INTERVENER WAS FORCED TO LAY OFF ITS EMPLOYEES AND CLOSE ITS RESTAURANT UNTIL SUCH TIME AS IT WAS ECONOMICALLY FEASIBLE TO REOPEN. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON JUNE 5, 1969. WHILE THE INTERVENER'S RESTAURANT WAS CLOSED ON THAT DATE THIS FACT WAS NOT MADE KNOWN TO THE BOARD AT THE HEARING IN THIS MATTER ALTHOUGH ALL PARTIES WERE REPRESENTED.

2. FOLLOWING THE HEARING ON JUNE 5TH, THE BOARD ON JUNE 9, 1969 DIRECTED THAT A REPRESENTATION VOTE BE TAKEN. REPRESENTATIVES OF ALL PARTIES ATTENDED AT THE REGISTRAR'S OFFICE ON JULY 3, 1969 AND MADE ARRANGEMENTS FOR THE TAKING OF THE VOTE. AT THAT TIME THE REPRESENTATIVES OF THE PARTIES SIGNED A STATEMENT WHICH READS, IN PART, AS FOLLOWS: "WE, THE REPRESENTATIVES OF THE PARTIES, IN THE ABOVE MATTER, AGREE THAT THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN THIS CASE SHOULD BE CONDUCTED ON THURSDAY, JULY 10TH, 1969

... WE ALSO AGREE THAT A NOTICE OF TAKING OF VOTE SHOULD BE MAILED BY THE BOARD TO EACH EMPLOYEE." IT APPEARED FROM THE STATEMENT SIGNED ON JULY 3RD THAT A DISPUTE AROSE WITH RESPECT TO THE EMPLOYMENT STATUS OF ONE OF THE APPLICANTS AT THAT TIME AND THE RESPONDENT'S POSITION IS STATED IN THE AGREEMENT AS FOLLOWS: "THE REPRESENTATIVE OF THE RESPONDENT MAINTAINS THAT THE SAID KAREN HANSON IS ON A LEAVE OF ABSENCE AND SUBJECT TO RECALL." AT THE MEETING THE PARTIES AGREED TO A VOTERS' LIST AS OF JUNE 5, 1969 AND APART FROM THE CHALLENGE WITH RESPECT TO KAREN HANSON THE NAMES OF THE THREE APPLICANTS APPEARED ON THE VOTERS' LIST.

3. AS AGREED TO BY THE PARTIES, THE VOTE WAS TAKEN ON JULY 10, 1969. REPRESENTATIVES OF THE THREE PARTIES SIGNED THE CERTIFICATION OF CONDUCT OF ELECTION AT THE CONCLUSION OF THE VOTE AND NO CHALLENGE WAS MADE WITH RESPECT TO THE VOTE AT THAT TIME. HOWEVER, THE VOTE WAS NOT COUNTED AT THAT TIME DUE TO THE FACT THAT THE INTERVENER MADE A CHALLENGE WITH RESPECT TO THE ELIGIBILITY TO VOTE OF MARGARET DONOHUE, ONE OF THE APPLICANTS. SUBSEQUENTLY, ON AUGUST 6, 1969, THE INTERVENER WITHDREW ITS CHALLENGE WITH RESPECT TO MARGARET DONOHUE. ACCORDINGLY, THE BOARD FOUND THAT MARGARET DONOHUE WAS ENTITLED TO VOTE AND DIRECTED THE REGISTRAR TO CAUSE THE BALLOTS CAST IN THE REPRESENTATION VOTE TO BE COUNTED.

4. THE VOTE COUNT WAS MADE ON AUGUST 11, 1969, AND THE RETURNING OFFICER ISSUED THE VOTE COUNT REPORT AS OF THAT DATE. THE VOTE COUNT DISCLOSED THAT OF THE THREE PERSONS ON THE REVISED VOTERS' LIST ONE PERSON MARKED HER BALLOT IN FAVOUR OF THE RESPONDENT AND TWO PERSONS MARKED THEIR BALLOT AGAINST THE RESPONDENT.

5. ON AUGUST 16, 1969, THE RESPONDENT WROTE TO THE BOARD AND ADVISED THAT IT WISHED "TO MAKE REPRESENTATIONS AS TO THE CONCLUSIONS THE BOARD SHOULD REACH IN VIEW OF SAID REPORT" OF THE RETURNING OFFICER. IT WAS THE RESPONDENT'S POSITION THAT SINCE THE INTERVENER HAD CLOSED ITS ESTABLISHMENT THERE WERE THEREFORE NO EMPLOYEES ON JULY 10, 1969, THE DATE THE VOTE WAS TAKEN, AND THE REPRESENTATION VOTE WAS ACCORDINGLY A NULLITY.

6. HAVING REGARD TO THE CIRCUMSTANCES OUTLINED ABOVE AND IN VIEW OF THE RESPONDENT'S AGREEMENT IN WRITING ON JULY 3, 1969, THAT THE VOTE SHOULD BE TAKEN ON JULY 10TH, AND IN VIEW OF THE FACT THAT THE RESPONDENT HAD FULL KNOWLEDGE OF THE SITUATION WHICH EXISTED, THE RESPONDENT CANNOT NOW BE HEARD TO REPUDIATE ITS AGREEMENT TO TAKE THE VOTE. IN THIS CASE, ALL OF THE EMPLOYEES HAD AN OPPORTUNITY TO VOTE AND THREE OF THE FOUR PERSONS

ON THE VOTERS' LIST IN FACT VOTED. THE RESPONDENT AGREED TO THE REVISED VOTERS' LIST AND ALL PERSONS ON THE REVISED VOTERS' LIST CAST A BALLOT. THE RESPONDENT SUBSEQUENTLY SIGNED THE CERTIFICATION OF CONDUCT OF CONDUCT OF ELECTION. WHILE IT WAS OPEN TO THE RESPONDENT AT THE HEARING ON JUNE 5, 1969 TO OBJECT TO THE TAKING OF THE REPRESENTATION VOTE IN VIEW OF THE FACT THAT THE INTERVENER HAD CLOSED ITS ESTABLISHMENT, THE RESPONDENT FAILED TO ADDUCE EVIDENCE WITH RESPECT TO THE CLOSING OF THE INTERVENER'S ESTABLISHMENT EVEN THOUGH SUCH EVIDENCE WAS AVAILABLE TO THE RESPONDENT AT THAT TIME.

7. THE BOARD THEREFORE FINDS THAT SINCE THE RESPONDENT HAD AN OPPORTUNITY TO ADDUCE EVIDENCE AND MAKE WHATEVER REPRESENTATIONS IT WISHED TO MAKE PRIOR TO THE BOARD'S DECISION TO DIRECT THE REPRESENTATION VOTE IN THIS MATTER, AND THE FACT THAT THE RESPONDENT DID NOT OBJECT TO THE BOARD'S DECISION OF JUNE 9TH WHEREIN THE BOARD DIRECTED THAT A VOTE BE TAKEN, AND HAVING REGARD TO THE AGREEMENT ENTERED INTO BY THE RESPONDENT CONCERNING THE TAKING OF THE VOTE AND THE FACT THAT ALL EMPLOYEES ON THE REVISED VOTERS' LIST CAST A BALLOT, THE BOARD IS OF OPINION THAT THERE IS NO JUST CAUSE TO IGNORE THE WISHES OF THE EMPLOYEES WHO CAST THEIR BALLOT IN THIS MATTER. THE FACT THAT THE EMPLOYEES WERE LAID OFF AND WERE NOT AT WORK ON THE DATE THE VOTE IS TAKEN DOES NOT ESTABLISH THAT THEY CEASED TO BE EMPLOYEES OF THE INTERVENER AT THAT TIME. THE FACT THAT THEY APPEARED AT THE INTERVENER'S PREMISES AND CAST A BALLOT INDICATES THAT THEY CONSIDERED THEMSELVES TO BE EMPLOYEES IN THE BARGAINING UNIT AND NO CHALLENGE WAS MADE TO THEIR EMPLOYMENT STATUS AT THE TIME THE VOTE WAS TAKEN. IN THESE CIRCUMSTANCES, THE BOARD DISMISSES THE INTERVENER'S OBJECTIONS TO THE VOTE.

8. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN OPPOSITION TO THE RESPONDENT.

9. THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF SINCLAIR'S RESTAURANT (ATIKOKAN) LIMITED FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

10. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

16461-69-R: GEORGE ROSEBUSH (APPLICANT) V. UNITED PAPERMAKERS AND PAPERWORKERS, SPRUCE FALLS FOREMAN'S LOCAL 523 (RESPONDENT).

(RE: SPRUCE FALLS POWER AND PAPER COMPANY LIMITED).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: M. C. DILLON FOR THE APPLICANT,
J. M. BUCHANAN FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 18, 1969.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS
MADE UNDER SECTION 43 OF THE LABOUR RELATIONS ACT.

2. ON JANUARY 29TH, 1947, THIS BOARD CERTIFIED THE INTERNATIONAL BROTHERHOOD OF PAPER MAKERS, KAPUSKASING FOREMENS' LOCAL No. 523 (HEREINAFTER REFERRED TO AS LOCAL No. 523) AS BARGAINING AGENT FOR A UNIT OF SALARIED FOREMEN IN THE EMPLOY OF SPRUCE FALLS POWER AND PAPER COMPANY LIMITED. IT APPEARS THAT THE PARTIES MET AND BARGAINED AND THAT A CONCILIATION BOARD WAS ESTABLISHED. THERE WAS FILED AS AN EXHIBIT A COPY OF THE REPORT OF THE CONCILIATION BOARD TO THE MINISTER. THE REPORT RECORDS THE FACT THAT A SETTLEMENT HAD BEEN BROUGHT ABOUT BY AN AGREEMENT HAVING BEEN ENTERED INTO BETWEEN THE ORGANIZATION KNOWN AS SPRUCE FALLS FOREMENS' ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) AND THE COMPANY. IT SEEMS THAT THE COMPANY WAS NOT PREPARED TO ENTER INTO A COLLECTIVE AGREEMENT WITH LOCAL No. 523 BUT WAS WILLING TO ENTER INTO AN AGREEMENT WITH THE ASSOCIATION. THE POSITION TAKEN BY THE COMPANY IS REFLECTED IN A NUMBER OF RECITALS AND PROVISIONS IN THE SUCCESSION OF COLLECTIVE AGREEMENTS THAT HAVE BEEN EXECUTED BY THE COMPANY AND THE ASSOCIATION FROM 1947 TO THE PRESENT. WE WOULD MENTION THAT AT SOME UNSPECIFIED TIME DURING THE PAST TWENTY YEARS THE OPERATIONS AT KAPUSKASING CAME UNDER THE JOINT MANAGEMENT OF SPRUCE FALLS POWER AND PAPER COMPANY LIMITED AND ITS PARENT COMPANY KIMBERLEY-CLARK OF CANADA LIMITED. THE ASSOCIATION AND THE TWO COMPANIES HAVE BEEN THE NAMED PARTIES TO ALL SUBSEQUENT COLLECTIVE AGREEMENTS.

3. THE MOST RECENT COLLECTIVE AGREEMENT ENTERED INTO BY THE PARTIES IS DATED SEPTEMBER 27TH, 1968 AND WAS EXECUTED ON DECEMBER 6TH, 1968. THE ARTICLE ENTITLED "REMUNERATION", HOWEVER, PROVIDES THAT "THE SCHEDULE OF SALARIES ATTACHED TO THIS AGREEMENT SHALL GOVERN FOREMEN COMING UNDER THIS AGREEMENT FOR A PERIOD OF ONE YEAR, FROM MAY 1ST, 1968 TO APRIL 30TH, 1969." THE RENEWAL CLAUSE PROVIDES THAT THE AGREEMENT IS TO REMAIN IN FORCE UNTIL APRIL 30TH, 1969. NO APPLICATION HAS BEEN MADE FOR CONCILIATION SERVICES. IN LIGHT OF THE AGREEMENT OF THE PARTIES AT THE HEARING THAT THE APPLICATION WAS TIMELY, IT IS APPARENT THAT IT WAS THE INTENTION OF THE PARTIES THAT THE AGREEMENT BE EFFECTIVE FROM MAY 1ST, 1968 TO APRIL 30TH, 1969, AND WE SO INTERPRET THE PROVISIONS RELATING TO ITS TERM.

4. THE 1968 COLLECTIVE AGREEMENT AS DID ALL ITS PREDECESSORS, CONTAINS THE FOLLOWING RECITALS:

WHEREAS UNITED PAPERMAKERS AND PAPERWORKERS, KAPUSKASING FOREMEN'S LOCAL No. 523 WAS DULY ORGANIZED AND PETITIONED TO THE ONTARIO LABOUR RELATIONS BOARD FOR CERTIFICATION OF BARGAINING REPRESENTATIVES ON BEHALF OF ITS MEMBERS, BEING THE SALARIED FOREMEN DIRECTLY CONNECTED WITH THE MILL ORGANIZATION OF SPRUCE FALLS POWER AND PAPER COMPANY, LIMITED (HEREINAFTER CALLED THE "COMPANY") AND THE ONTARIO LABOUR RELATIONS BOARD GRANTED SUCH PETITION AND DULY ISSUED ITS CERTIFICATE IN THAT REGARD.

AND WHEREAS THE COMPANY HAVING OPPOSED SUCH PETITION APPEALED THEREFROM, BUT SUCH APPEAL HAS NOT YET BEEN DISPOSED OF AND CONCILIATION PROCEEDINGS HAVE ENSUED.

AND WHEREAS IT APPEARS FROM THE RECORD OF SUCH PETITION THE APPEAL THEREFROM AND THE CONCILIATION PROCEEDINGS, THE COMPANY HAS CONTENDED THAT THE FOREMEN IN QUESTION WERE NOT "EMPLOYEES" WITHIN THE MEANING OF THE WARTIME LABOUR RELATIONS REGULATION AND THAT UNITED PAPERMAKERS AND PAPERWORKERS, SPRUCE FALLS FOREMEN'S LOCAL No. 523 WAS NOT AN APPROPRIATE BARGAINING UNIT.

AND WHEREAS IN ORDER TO RESOLVE SUCH DIFFERENCES AND PURSUANT TO THE RECOMMENDATION OF THE CONCILIATION BOARD, THE SAID FOREMEN HAVE ORGANIZED SPRUCE FALLS FOREMEN'S ASSOCIATION FOR THE PURPOSE OF REPRESENTING THE SAID FOREMEN IN ALL THEIR LABOUR RELATIONS WITH THE COMPANIES AND THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT.

5. IMMEDIATELY FOLLOWING THE RECITALS THE AGREEMENT READS:

NOW THIS AGREEMENT WITNESSETH:

PURPOSE OF FOREMEN'S ASSOCIATION

THE ASSOCIATION HAS BEEN FORMED BY THE SALARIED FOREMEN IN ORDER THAT THEY MAY DEAL COLLECTIVELY ON MATTERS OF SUCH VITAL INTEREST AS REMUNERATION, GRIEVANCE ADJUSTMENT, HOURS OF WORK, ETC. AND IN ORDER THAT THEIR FUNCTION AS FRONTLINE SUPERVISORS MAY BE EXERCISED IN THE BEST INTERESTS OF THE COMPANIES AND THEMSELVES.

MEMBERSHIP IN THE ASSOCIATION

ALL SALARIED FOREMEN DIRECTLY CONNECTED WITH MILL ORGANIZATION ARE CONSIDERED TO BE WITHIN THE BARGAINING UNIT. FURTHERMORE, ALL FOREMEN WHO ARE

MEMBERS AS OF THE DATE OF THIS AGREEMENT OR WHO SUBSEQUENTLY BECOME FOREMEN SHALL BELONG TO THE SAID ASSOCIATION AS A CONDITION OF EMPLOYMENT. NEWLY APPOINTED FOREMEN SHALL BECOME MEMBERS OF THE ASSOCIATION WITHIN 30 DAYS. THE OFFICERS OF THE ASSOCIATION ARE HEREWITH RECOGNIZED AS BARGAINING AGENTS FOR ALL OF THE SALARIED FOREMEN IN THE BARGAINING UNIT SPECIFIED.

USE OF NON EMPLOYEE NEGOTIATORS

WHILE THE COMPANIES PREFER TO DEAL DIRECTLY WITH THE OFFICERS OF THE ASSOCIATION IN ALL MATTERS OF MUTUAL INTEREST, IT IS UNDERSTOOD THAT THE ASSOCIATION MAY CHOOSE TO CALL UPON THE SERVICE OF ANY OUTSIDE AGENT FOR ASSISTANCE IN DEALINGS WITH THE TOP MANAGEMENT.

6. THE LAST ARTICLE OF THE AGREEMENT READS:

MEMBERSHIP IN UNITED PAPERMAKERS AND PAPERWORKERS,
SPRUCE FALLS FOREMEN'S LOCAL NO. 523

THE COMPANIES AGREE THAT ALL OR ANY MEMBERS OF THE SPRUCE FALLS FOREMEN'S ASSOCIATION MAY JOIN OR CONTINUE TO REMAIN AS MEMBERS OF UNITED PAPERMAKERS AND PAPERWORKERS, SPRUCE FALLS FOREMEN'S LOCAL NO. 523, BUT THE COMPANIES IN NO WAY RECOGNIZE UNITED PAPERMAKERS AND PAPER WORKERS, SPRUCE FALLS FOREMEN'S LOCAL NO. 523, WHICH SHALL NOT BE THE BARGAINING REPRESENTATIVE OF THE SAID FOREMEN, IT BEING UNDERSTOOD AND AGREED THAT SPRUCE FALLS FOREMEN'S ASSOCIATION SHALL BE THE SOLE BARGAINING AGENT OF THE SAID FOREMEN.

7. ACCORDING TO THE EVIDENCE THE ASSOCIATION HAS NO CONSTITUTION, ELECTS NO OFFICERS, HOLDS NO MEETINGS AND COLLECTS NO DUES. TO THE KNOWLEDGE OF THE APPLICANT, NO ASSOCIATION, IN FACT, WAS EVER FORMED. ON THE OTHER HAND, LOCAL NO. 523 HAS A CONSTITUTION, ELECTS OFFICERS ANNUALLY, HOLDS MEETINGS AND COLLECTS UNION DUES. MOREOVER, IT IS THE OFFICERS OF LOCAL NO. 523 WHO NEGOTIATED THE 1968 AND ALL OF THE EARLIER COLLECTIVE AGREEMENTS. FURTHER, ALTHOUGH GEORGE ROSEBUSH EXECUTED THE COLLECTIVE AGREEMENT AS THE CUBRENT PRESIDENT OF THE ASSOCIATION HE IS, IN FACT, PRESIDENT OF LOCAL NO. 523 AND NOT OF THE ASSOCIATION WHICH HAS NO OFFICERS.

8. IT IS CLEAR FROM THE EVIDENCE THAT THE ASSOCIATION IS A FICTIONAL ENTITY CREATED IN 1947 AS A MATTER OF EXPEDIENCY AND DESIGNED TO DEAL WITH A TEMPORARY SITUATION IN ORDER TO ACHIEVE A SETTLEMENT ON THE FIRST AGREEMENT. IN FACT, LOCAL NO. 523 IS AND ALWAYS HAS BEEN THE BARGAINING AGENT FOR THE EMPLOYEES IN THE BARGAINING UNIT COVERED BY THE 1968 AND PRIOR AGREEMENTS NOTWITHSTANDING

THE LAST ARTICLE OF THE AGREEMENT QUOTED ABOVE. THE REALITY IS THAT LOCAL NO. 523 MERELY BARGAINS IN THE NAME OF THE ASSOCIATION, WHICH IN ITSELF IS A NON-EXISTENT ENTITY. IT IS A REASONABLE INFERENCE FROM THE EVIDENCE THAT THE COMPANIES HAVE BEEN FULLY COGNIZANT OF THIS STATE OF AFFAIRS. THE BOARD ACCORDINGLY FINDS FOR PURPOSES OF THIS APPLICATION THAT LOCAL NO. 523 IS THE BARGAINING AGENT FOR THE UNIT DESCRIBED IN THE AGREEMENT AND THEREFORE IS PROPERLY NAMED AS THE RESPONDENT. WE WOULD MENTION THAT THE COMPANIES WERE SERVED WITH NOTICE OF THE APPLICATION AND HEARING IN THIS MATTER BUT ELECTED NOT TO BE REPRESENTED. MOREOVER, THEY TOOK NO POSITION ON THE ISSUE OF THE BARGAINING RIGHTS.

9. THE BOARD IS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF SPRUCE FALLS POWER AND PAPER COMPANY LIMITED AND KIMBERLEY-CLARK OF CANADA LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JULY 31, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

10. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF SPRUCE FALLS POWER AND PAPER COMPANY LIMITED AND KIMBERLEY-CLARK OF CANADA LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL SALARIED FOREMEN EMPLOYED BY SPRUCE FALLS POWER AND PAPER COMPANY LIMITED AND KIMBERLEY-CLARK OF CANADA LIMITED DIRECTLY CONNECTED WITH THE MILL AT KAPUSKASING ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

16638-69-R: THE EMPLOYEES OF CUNA (HAMILTON) CREDIT UNION LIMITED MEMBERS OF OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 290, WITH THE EXCEPTION OF THE OFFICE MANAGER, LOAN OFFICER, OFFICE SUPERVISOR, MEMBER RELATIONS OFFICER AND TORONTO BRANCH MANAGER (APPLICANT) V. OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (RESPONDENT).

(RE: CUNA (HAMILTON) CREDIT UNION LIMITED).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 3, 1969.

1. THE APPLICANTS HAVE APPLIED AUGUST 29TH, 1969, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT FOR DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF CUNA (HAMILTON) CREDIT UNION LIMITED REPRESENTED BY THE RESPONDENT.
2. IT APPEARS THAT THE RESPONDENT AND CUNA (HAMILTON) CREDIT UNION LIMITED WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH WAS ENTERED INTO ON THE 16TH DAY OF AUGUST, 1967, FOR A TERM OF THREE YEARS AND WHICH "SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL MIDNIGHT AUGUST 15TH, 1970". PURSUANT TO THE PROVISIONS OF SECTION 43(2)(A) OF THE LABOUR RELATIONS ACT AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT MAY ONLY BE MADE AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT. IN THE INSTANT CASE APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT UNDER SECTION 43 OF THE LABOUR RELATIONS ACT MAY ONLY BE MADE ON OR AFTER JUNE 15TH, 1970. ON THE FACTS SET OUT ABOVE THIS APPLICATION WOULD THEREFORE APPEAR TO BE PREMATURE.
3. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT THE TIME PERIOD REFERRED TO IN SECTION 43(2)(A) OF THE LABOUR RELATIONS ACT HAS NOT ELAPSED.
4. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW PURSUANT TO THE PROVISIONS OF SECTION 43(2)(A) OF THE ACT THAT THIS APPLICATION IS UNTIMELY.
5. THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE SEPTEMBER 11TH, 1969, WHETHER, IN THEIR OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS IN THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF OPINION THAT THE BOARD IS IN ERROR THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.
6. THIS APPLICATION WILL NOT BE PURSUED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANTS.
7. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE OF THE APPLICANTS.

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: SEPTEMBER 16, 1969.

1. IN ITS DECISION DATED SEPTEMBER 3RD, 1969, IN THIS MATTER, THE BOARD DIRECTED THAT THE APPLICANTS ADVISE THE BOARD IN WRITING ON OR BEFORE SEPTEMBER 11TH, 1969, WHETHER IN THEIR OPINION, THE BOARD WAS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT IN THE BOARD'S DECISION OF SEPTEMBER 3RD, 1969.

2. SINCE THE BOARD HAS NOT RECEIVED ANY COMMUNICATION FROM THE APPLICANTS AS DIRECTED, THE BOARD IS SATISFIED THAT PURSUANT TO THE PROVISIONS OF SECTION 43(2)(A) OF THE LABOUR RELATIONS ACT THAT THIS APPLICATION IS UNTIMELY.

3. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANTS HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - LOCKOUT UNLAWFUL

16572-69-U: UNITED TRANSPORTATION UNION (APPLICANT) V. THE ALGOMA STEEL CORPORATION, LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: MAURICE W. WRIGHT, Q.C., AND G. W. McDEVITT FOR THE APPLICANT, C.A. MORLEY, C.G. RIGGS, RONALD FORBES AND JAMES MCINTYRE FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 17, 1969.

1. THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT AND HAS APPLIED FOR A DECLARATION THAT THE RESPONDENT ENGAGED IN AN UNLAWFUL LOCK-OUT OF EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT. THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE PARTIES ON THE FACTS OF THIS CASE.

2. ON AUGUST 1ST, 1969, CERTAIN EMPLOYEES REPRESENTED BY THE UNITED STEELWORKERS OF AMERICA ENGAGED IN A "WILDCAT STRIKE" ON THE EXPIRY OF THEIR COLLECTIVE AGREEMENT WITH THE RESPONDENT AND AT A TIME WHEN THE CONCILIATION PROCESSES HAD NOT BEEN COMPLETED.

ON THE EVIDENCE BEFORE US THE WILDCAT STRIKE ENGAGED IN BY THE EMPLOYEES REPRESENTED BY THE UNITED STEELWORKERS OF AMERICA WAS AN UNLAWFUL STRIKE. THE OFFICERS OF LOCAL 2251 OF THE UNITED STEELWORKERS OF AMERICA REPUDIATED THE ACTIONS OF THESE EMPLOYEES AND URGED THEIR RETURN TO WORK. HOWEVER, THE STRIKERS SUCCEEDED IN SEALING THE GATES OF THE RESPONDENT'S PREMISES IN SAULT STE. MARIE AND THE MAJORITY OF EMPLOYEES WERE UNABLE TO OBTAIN ACCESS TO THE RESPONDENT'S PREMISES. THE RESPONDENT, BECAUSE OF THE ACTION OF THE STRIKERS AND IN VIEW OF THE PERSISTENT RUMOURS THAT THE STEELWORKERS WOULD NOT WORK UNLESS THERE WAS A NEW COLLECTIVE AGREEMENT SIGNED, WAS FORCED TO CLOSE ITS BLAST FURNACES AND COKE OVENS SINCE THE RESPONDENT WAS UNABLE TO DETERMINE HOW LONG THE STRIKE WOULD LAST. THE EMPLOYEES OF THE RESPONDENT WHO WERE REPRESENTED BY THE APPLICANT IN THIS CASE COOPERATED WITH THE RESPONDENT IN CLOSING THE PLANT. BECAUSE OF THE FACT THAT THE RESPONDENT WAS FORCED TO CLOSE DOWN ITS OPERATIONS WITH ONLY A PORTION OF ITS WORK FORCE AVAILABLE FOR THIS PURPOSE AND THE FACT THAT THE BLAST FURNACES WERE SHUT DOWN TOO HURRIEDLY IN THE CIRCUMSTANCES, THE RESPONDENT'S EQUIPMENT SUSTAINED MAJOR DAMAGE. THE TOTAL AMOUNT OF THE DAMAGE WILL NOT BE KNOWN UNTIL SUCH TIME AS THE RESPONDENT RECOMMENCES ITS OPERATIONS.

3. IT APPEARS FROM THE EVIDENCE THAT BY AUGUST 11TH THE SITUATION WITH THE STEELWORKERS HAD SUBSIDED TO A POINT WHERE THE RESPONDENT COULD HAVE RE-OPENED ITS OPERATIONS. HOWEVER, NOT ONLY WAS THE RESPONDENT IN THE PROCESS OF BARGAINING FOR A NEW COLLECTIVE AGREEMENT WITH THE STEELWORKERS, BUT THE APPLICANT UNION WAS ALSO BARGAINING FOR A RENEWAL OF ITS COLLECTIVE AGREEMENT WHICH HAD EXPIRED ON JULY 31ST, 1969. THE RESPONDENT HAD APPLIED FOR CONCILIATION SERVICES ON AUGUST 11TH, 1969.

4. ON AUGUST 11TH, 1969, CERTAIN OFFICERS OF THE APPLICANT WENT TO THE OFFICES OF THE RESPONDENT AND WERE GIVEN A COPY OF A NOTICE WHICH READS AS FOLLOWS:

"WITH ORDER FULLY RESTORED AT PLANT GATES AND ACCEPTANCE BY THE MEMBERSHIP OF LOCAL 2251 SECURED IN THE MATTER OF DISCIPLINING THOSE RESPONSIBLE FOR THE ILLEGAL STRIKE, THE COMPANY WILL BEGIN TO RESUME OPERATIONS AT STEELWORKS.

FINISHING AND SHIPPING OPERATIONS WILL BE THE FIRST AFFECTED. STRUCTURAL AND OTHER ROLLING MILLS WILL FOLLOW TO THE EXTENT THAT STEEL IS AVAILABLE.

IRONMAKING, STEELMAKING AND THOSE COKE OVEN BATTERIES NOW SHUT DOWN WILL START AGAIN WHEN

THE COMPANY CAN EXPECT REASONABLE CONTINUITY OF OPERATIONS FOR THEM. THE GREAT RISKS INVOLVED DO NOT PERMIT RESTARTING THESE DEPARTMENTS WITHOUT SUCH CONTINUITY. THIS WILL BE DISCUSSED WITH UNION LOCALS AT THE STEELWORKS.

EMPLOYEES WILL BE NOTIFIED BY THEIR SUPERVISORS OF WHEN THEY ARE TO REPORT FOR WORK.

AUGUST 11, 1969".

5. IT WAS THE RESPONDENT'S POSITION THAT IT WOULD BE UN-ECONOMICAL FOR IT TO RECOMMENCE OPERATIONS OF ITS COKE OVENS AND BLAST FURNACES UNTIL IT COULD BE ASSURED OF A CONTINUITY OF OPERATION AT ITS ALGOMA PLANT WHICH COULD ONLY BE BROUGHT ABOUT WITH THE COOPERATION OF THE FOUR UNIONS THAT REPRESENTED ITS EMPLOYEES AT SAULT STE. MARIE. THE RESPONDENT THEREFORE REQUESTED WRITTEN ASSURANCES FROM THE FOUR UNIONS, INCLUDING THE APPLICANT, THAT NONE OF THE UNIONS WOULD ENGAGE IN A STRIKE, LAWFUL OR OTHERWISE, UNTIL THE ELAPSE OF A PERIOD OF TWO MONTHS, AND THAT IF A STRIKE WAS TO BE HELD, AT LEAST FOUR DAYS NOTICE WOULD BE GIVEN TO THE RESPONDENT IN ORDER THAT THE RESPONDENT WOULD BE ABLE TO CONDUCT AN ORDERLY AND SAFE SHUT DOWN OF ITS STEEL MILL OPERATIONS.

6. SINCE CONCILIATION SERVICES HAD BEEN APPLIED FOR ON AUGUST 11TH, 1969, WITH RESPECT TO THE BARGAINING BETWEEN THE RESPONDENT AND THE APPLICANT, THERE WAS A VERY REAL POSSIBILITY THAT THE APPLICANT WOULD HAVE BEEN IN A STRIKE POSITION PRIOR TO THE EXPIRATION OF THE TWO MONTH PERIOD WHICH THE RESPONDENT REQUESTED. HOWEVER, NONE OF THE TRADE UNIONS GAVE THE ASSURANCES REQUESTED BY THE RESPONDENT AND AT 12:01 A.M. ON AUGUST 28TH, 1969, THE UNITED STEELWORKERS OF AMERICA COMMENCED A LAWFUL STRIKE AT THE RESPONDENT'S PREMISES.

7. THE APPLICANT TOOK THE POSITION THAT AS OF AUGUST 11TH, 1969, ON THE RESPONDENT'S OWN ADMISSION, THE RESPONDENT WAS IN A POSITION TO RE-OPEN ITS OPERATIONS. HOWEVER, THE RESPONDENT REFUSED TO DO SO WITHOUT THE ASSURANCES REFERRED TO ABOVE. THE APPLICANT ARGUED THAT THE RESPONDENT'S INSISTENCE OF SUCH ASSURANCES WAS AN ATTEMPT TO COMPEL OR INDUCE THE EMPLOYEES REPRESENTED BY THE APPLICANT TO REFRAIN FROM EXERCISING A RIGHT OR PRIVILEGE UNDER THE LABOUR RELATIONS ACT, I.E., THE RIGHT TO ENGAGE IN A LAWFUL STRIKE DURING THE TWO MONTH PERIOD. IT WAS THE APPLICANT'S ARGUMENT THAT THE RESPONDENT'S REFUSAL TO RE-EMPLOY ITS EMPLOYEES ON WORK WHICH COULD HAVE BEEN MADE AVAILABLE WAS THEREFORE AN UNLAWFUL LOCK-OUT OF THE EMPLOYEES REPRESENTED BY THE APPLICANT IN THE CIRCUMSTANCES DESCRIBED ABOVE. SINCE THE ALLEGED LOCK-OUT

TOOK PLACE DURING THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT AND PRIOR TO THE TIME WHEN THE CONCILIATION PROCESS HAD BEEN COMPLETED THE APPLICANT CONTENDED THAT SUCH ACTION CONSTITUTED AN UNLAWFUL LOCK-OUT WITHIN THE MEANING OF SECTION 54 OF THE LABOUR RELATIONS ACT.

8. THE TERM "LOCK-OUT" AS DEFINED IN SECTION 1(1)(g) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

1(1) IN THIS ACT,

(g) "LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AND EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES.

9. THERE WAS EVIDENCE THAT, APART FROM DAMAGE TO THE FACILITIES BY AN ENFORCED RAPID CLOSING DOWN OF THESE OPERATIONS, THE LOSS INCURRED BY THE RESPONDENT IN THE CLOSING DOWN AND RE-OPENING OF THE OPERATIONS WOULD AMOUNT TO SOME EIGHT HUNDRED THOUSAND DOLLARS. IT CANNOT BE SAID THAT THE RESPONDENT WAS ACTING IN AN UNREASONABLE FASHION WHEN IT REQUIRED ASSURANCES FROM THE TRADE UNIONS THAT THE PLANT WOULD NOT BE CLOSED BY A LAWFUL STRIKE AS SOON AS THE PRODUCTION FACILITIES HAD RE-OPENED.

10. THE BOARD FINDS THAT THE CONDITIONS ATTACHED TO THE RE-OPENING OF THE RESPONDENT'S PLANT WAS IN EFFECT AN ATTEMPT BY THE RESPONDENT TO EXTEND THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. SECTION 39(2) OF THE LABOUR RELATIONS ACT CONTEMPLATES THAT "THE PARTIES MAY, BEFORE OR AFTER A COLLECTIVE AGREEMENT HAS CEASED TO OPERATE, AGREE TO CONTINUE ITS OPERATION OR ANY OF ITS PROVISIONS FOR A PERIOD OF LESS THAN ONE YEAR WHILE THEY ARE BARGAINING FOR ITS RENEWAL". THE PROPOSAL MADE BY THE RESPONDENT IN THIS CASE WAS THEREFORE A PROPOSAL FOR AN AGREEMENT WHICH WAS CONTEMPLATED BY THE ACT.

11. HOWEVER, LET US ASSUME THAT WE FIND THAT AN AGREEMENT TO EXTEND THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT DURING THE COURSE OF BARGAINING CAN BE CONSTRUED AS AN ATTEMPT TO INDUCE

EMPLOYEES TO REFRAIN FROM EXERCISING A RIGHT UNDER THE ACT, AS ARGUED BY THE APPLICANT. IN ORDER THAT THE BOARD MAY DECLARE THAT THE RESPONDENT HAS ENGAGED IN A LOCK-OUT OF ITS EMPLOYEES, THE APPLICANT MUST ESTABLISH THAT THERE HAS BEEN EITHER "THE CLOSING OF A PLACE OF EMPLOYMENT" OR "A SUSPENSION OF WORK" OR "A REFUSAL BY THE EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF ITS EMPLOYEES" WITH A VIEW TO COMPEL OR INDUCE THE EMPLOYEES TO DO THE THINGS REFERRED TO IN SECTION 1(1)(g) OF THE ACT.

12. ON THE EVIDENCE OF THIS CASE IT IS QUITE TRUE THAT THE RESPONDENT CLOSED ITS PLACE OF EMPLOYMENT. HOWEVER, THIS CLOSURE WAS BROUGHT ABOUT BY THE UNLAWFUL ACTIVITIES OF CERTAIN EMPLOYEES IN THE UNITED STEELWORKERS OF AMERICA BARGAINING UNIT. THIS WAS NOT AN ACTION BROUGHT ABOUT OR ENCOURAGED BY THE RESPONDENT COMPANY IN ORDER TO OBTAIN THE ASSURANCES REQUESTED. WHEN THE RESPONDENT WAS FORCED TO CLOSE ITS OPERATION BY REASON OF THE UNLAWFUL WORK STOPPAGE, MANY OF ITS EMPLOYEES WERE LAID OFF BECAUSE OF THE FACT THE RESPONDENT WAS UNABLE TO CONTINUE PRODUCTION.

13. FINALLY WHEN ONE LOOKS AT THE WORDS USED IN SECTION 1(1)(g) AND COMPARES THAT WORDING WITH OTHER SECTIONS OF THE ACT, SUCH AS SECTION 50, IT IS APPARENT THAT WHILE SECTION 50 REFERS TO A REFUSAL "TO EMPLOY OR CONTINUE TO EMPLOY", SECTION 1(1)(g) USES ONLY THE PHRASE "TO CONTINUE TO EMPLOY". ON THE FACTS OF THIS CASE, THE CONTINUANCE OF EMPLOYMENT WAS BROKEN BY THE ACTION OF THE STRIKERS AND NOT BY ANYTHING FOR WHICH THE EMPLOYER WAS DIRECTLY RESPONSIBLE.

14. WE CONSTRUE THE WORDS "TO CONTINUE TO EMPLOY" AS BEING SYNONMOUS WITH "TO CONTINUE TO WORK". IF ANY OTHER MEANING IS ATTACHED TO THESE WORDS IT WOULD ONLY SERVE TO WEAKEN THE APPLICANT'S CASE. THERE IS NO SUGGESTION IN THIS CASE THAT THE PERSONS REPRESENTED BY THE APPLICANT HAVE CEASED TO BE EMPLOYEES. IT IS THE RESPONDENT'S POSITION AS SUPPORTED BY THE EVIDENCE THAT ALL SUCH PERSONS CONTINUE AS EMPLOYEES AND ARE EITHER ON LAYOFF OR STANDBY AWAITING RECALL. IN ANY EVENT THE EMPLOYMENT RELATIONSHIP HAS NOT BEEN BROKEN AND THEREFORE THERE HAS BEEN NO REFUSAL TO CONTINUE TO EMPLOY SUCH PERSONS. THE DEFINITION, OF LOCK-OUT DOES NOT INCLUDE THE PHRASE "TO EMPLOY OR COMMENCE TO EMPLOY ". SINCE THE RESPONDENT DID NOT BRING ABOUT THE WORK STOPPAGE, THE RESPONDENT CANNOT BE SAID TO HAVE REFUSED "TO CONTINUE TO EMPLOY ITS EMPLOYEES".

15. SECTION 58 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

"58 NOTHING IN THIS ACT PROHIBITS ANY SUSPENSION OR DISCONTINUANCE FOR CAUSE OF AN EMPLOYER'S OPERATIONS OR THE QUITTING OF EMPLOYMENT FOR CAUSE IF THE SUSPENSION, DISCONTINUANCE OR QUITTING DOES NOT CONSTITUTE A LOCK-OUT OR STRIKE".

THE ACT THEREFORE ENVISAGES THAT A RESPONDENT MAY BE REQUIRED TO CLOSE ITS OPERATION FOR ECONOMIC PURPOSES OR BECAUSE IT HAS BEEN FORCED TO DO SO BY THE ACTIVITIES OF OTHER PERSONS. IF SUCH CLOSURE TAKES PLACE BECAUSE OF THE ACTIVITIES OF THIRD PARTIES OR FOR ECONOMIC REASONS THE CLOSURE OF OPERATIONS COULD NOT BE CONSTRUED AS A LOCK-OUT.

16. SINCE THE CLOSING OF THE PLANT WAS NOT CAUSED OR PRECIPITATED BY THE RESPONDENT, THE RESPONDENT IS THEREFORE NOT UNDER AN OBLIGATION TO RE-OPEN THE PLANT FOR A SHORT PERIOD OF TIME WHEN IT WOULD BE UNECONOMICAL FOR IT TO DO SO, AND ITS REFUSAL TO RE-EMPLOY THE EMPLOYEES REPRESENTED BY THE APPLICANT CANNOT BE CONSTRUED AS A LOCK-OUT. IN ORDER TO SATISFY THE REQUIREMENTS OF THE LOCK-OUT DEFINITION, IT MUST BE ESTABLISHED THAT AN EMPLOYER HAS DONE SOME ACT, E.G., CLOSED THE PLACE OF EMPLOYMENT, SUSPENDED OPERATIONS OR REFUSED TO CONTINUE TO EMPLOY PERSONS, WITH A VIEW TO DO THE THINGS DESCRIBED IN SECTION 1(1)(g). IF, AS IN THE INSTANT CASE, THE STATUS OF THE EMPLOYEES HAS BEEN ALTERED FOR OTHER REASONS, THE ELEMENTS OF LOCK-OUT ARE ABSENT. AGAIN, WHERE OPERATIONS ARE SUSPENDED FOR REASONS THAT DO NOT CONSTITUTE A LOCK-OUT, THE EMPLOYER'S REFUSAL TO RE-OPEN THE PLANT OR COMMENCE OPERATIONS CANNOT BE CONSTRUED AS A LOCK-OUT UNLESS THE EMPLOYER DOES SOMETHING TO ALTER THE EMPLOYEES' STATUS. MERE CONTINUANCE OF THE SITUATION CANNOT BE SAID TO ALTER THE STATUS OF THE EMPLOYEES WHO ARE ON LAYOFF AS A RESULT OF THE ACTIVITIES OF THIRD PARTIES.

17. IN ALL THE CIRCUMSTANCES OF THIS CASE AND FOR THE REASONS SET OUT ABOVE WE FIND THAT THE RESPONDENT HAS NOT ENGAGED IN A LOCK-OUT OF THE EMPLOYEES REPRESENTED BY THE APPLICANT.

18. THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - PROSECUTION

16465-69-U: RETAIL & FOOD EMPLOYEES' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. GREAT ATLANTIC & PACIFIC TEA COMPANY, LIMITED, AND KEN ADAMS (RESPONDENTS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN SCOTT, LES DOWLING FOR THE APPLICANT; B. H. STEWART, F. BRIDGE, K. ADAMS FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 12, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR OFFENCES UNDER THE LABOUR RELATIONS ACT.

2. THE APPLICATION WITH RESPECT TO THE ALLEGED OFFENCE PURSUANT TO SECTION 50(A) OF THE ACT IS DISMISSED.

3. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THE RESPONDENTS SOUGHT TO IMPOSE A CONDITION IN A CONTRACT OF EMPLOYMENT THAT SEEKS TO RESTRAIN EMPLOYEES FROM BECOMING MEMBERS OF A TRADE UNION, CONTRARY TO SECTION 50(B) OF THE LABOUR RELATIONS ACT.

(B) THE RESPONDENTS SOUGHT BY THREATS OF DISMISSAL TO COMPEL EMPLOYEES TO REFRAIN FROM BECOMING OR CEASING TO BE MEMBERS OF A TRADE UNION, CONTRARY TO SECTION 50(C) OF THE LABOUR RELATIONS ACT.

(C) THE RESPONDENTS SOUGHT BY INTIMIDATION OR COERCION TO COMPEL EMPLOYEES TO REFRAIN FROM BECOMING OR CONTINUING TO BE MEMBERS OF A TRADE UNION, CONTRARY TO SECTION 52 OF THE LABOUR RELATIONS ACT.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

16582-69-U: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. KERBEL DEVELOPMENTS LIMITED, MORRIS KERBEL AND FRANCO POLERO
(RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: S. ROBINS FOR THE APPLICANT,
AND L. B. WHITE FOR THE RESPONDENTS.

DECISION OF THE BOARD: SEPTEMBER 8, 1969.

1. THIS APPLICATION IS DISMISSED WITH RESPECT TO THE RESPONDENTS KERBEL DEVELOPMENTS LIMITED AND MORRIS KERBEL.

2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FRANCO POLERO FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- A) THAT THE SAID RESPONDENT FRANCO POLERO BEING A PERSON ACTING ON BEHALF OF AN EMPLOYER DID CONTRAVENE SECTION 48 OF THE LABOUR RELATIONS ACT IN THAT ON AND AFTER AUGUST 13TH, 1969, THE RESPONDENT FRANCO POLERO DID INTERFERE WITH THE SELECTION OF A TRADE UNION BY EMPLOYEES;
- B) THAT THE SAID RESPONDENT FRANCO POLERO BEING A PERSON ACTING ON BEHALF OF AN EMPLOYER DID CONTRAVENE SECTION 50(A) OF THE LABOUR RELATIONS ACT IN THAT ON AND AFTER AUGUST 13TH, 1969, FRANCO POLERO DID REFUSE TO CONTINUE TO EMPLOY CERTAIN EMPLOYEES;
- C) THE SAID RESPONDENT FRANCO POLERO DID CONTRAVENE SECTION 52 OF THE LABOUR RELATIONS ACT IN THAT ON AND AFTER AUGUST 13TH, 1969, FRANCO POLERO DID SEEK BY INTIMIDATION OR COERCION TO COMPEL PERSONS TO REFRAIN FROM BEING OR CONTINUE TO BE OR TO CEASE TO BE MEMBERS OF A TRADE UNION AND TO REFRAIN FROM EXERCISING ANY OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENTS - SECTION 65

15837-68-U: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, LOCAL 538 (COMPLAINANT) V. WEBSTER & HORSFALL (CANADA) LTD. AND JOHN S. GRANT (RESPONDENTS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: IAN SCOTT, GLENN PATTINSON, DOUG. TOUSSANT, FOR THE APPLICANT; C. G. RIGGS, R. T. SMITH, V. S. GRANT FOR THE RESPONDENT.

DECISION OF THE BOARD (MR. F. W. MURRAY DISSENTING IN PART): SEPTEMBER 8, 1969.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT BROUGHT BY THE COMPLAINANT ON BEHALF OF EIGHTEEN EMPLOYEES OF THE RESPONDENT COMPANY ALLEGING THAT THE RESPONDENT COMPANY VIOLATED SECTION 50(A), SECTION 50(C) AND SECTION 52 OF THE LABOUR RELATIONS ACT. THE RESPONDENT JOHN S. GRANT WAS AT ALL MATERIAL TIMES AN OFFICER OR DIRECTOR OF THE RESPONDENT COMPANY.

2. THE EIGHTEEN PERSONS WITH WHOM WE ARE CONCERNED HAVE BEEN ENGAGED IN A LAWFUL STRIKE SINCE 12:01 A.M. MARCH 3, 1969. PRIOR TO THE STRIKE THE PARTIES HAD BEEN NEGOTIATING TO REPLACE A COLLECTIVE AGREEMENT WHICH TERMINATED ON AUGUST 30, 1968.

3. THE RESPONDENT COMPANY'S BUSINESS WAS DIVIDED INTO (A) THE MANUFACTURE OF ROPE WIRE AND SPRING WIRE AND (B) THE IMPORTING OF SPRING WIRE FROM ITS PARENT COMPANY IN ENGLAND FOR RESALE. THE LATTER ASPECT OF ITS BUSINESS ACCOUNTED FOR ONE-HALF OF ITS SALES. IN 1966 AND 1967 THE COMPANY'S BUSINESS WAS CONDUCTED AT A LOSS BUT IN 1968 THERE WAS A SMALL PROFIT ENTIRELY DUE TO THE DEVALUATION OF STERLING IN NOVEMBER 1967. THE MANUFACTURING OPERATION HAS BEEN LARGELY SUBSIDIZED BY THE SUCCESS OF THE IMPORT - RESALE OPERATION. PRIOR TO MARCH 3, 1969 THE COMPANY'S FINANCIAL POSITION WAS AFFECTED BY THE SALE PRICE OF ROPE WIRE WHICH HAD REMAINED STATIC SINCE 1958, THE LOWERING OF KENNEDY ROUND TARIFFS WHICH HAD IMPROVED THE POSITION OF THE COMPANY'S COMPETITORS IN MAINTAINING LOWER PRICES FROM EUROPEAN MILLS, AND THE CHANGING NATURE OF THE INDUSTRY WHEREBY THE COMPANY'S COMPETITORS WERE GAINING CORPORATE CONTROL OF THE COMPANY'S CUSTOMERS. IN ADDITION TO THE ECONOMIC CONDITIONS AFFECTING THE COMPANY'S FINANCIAL POSITION THERE WERE DEMANDS BY THE COMPLAINANT UNION TO INCREASE WAGES.

4. IN EARLY 1969 THERE WERE A NUMBER OF CONSULTATIONS AMONG THE DIRECTORS OF THE COMPANY, BOTH IN CANADA AND ENGLAND, CONCERNING THE DISCONTINUANCE OF ITS MANUFACTURING OPERATION. THE COMPANY WAS CONCERNED WITH CONTINUING THAT PARTICULAR OPERATION IN THE LIGHT OF THE TOTAL ECONOMIC SITUATION. THE COMPANY THEN MADE A CONDITIONAL DECISION TO CLOSE THE MANUFACTURING OPERATION WHICH BECAME FINAL AS A RESULT OF THE ECONOMIC EFFECT OF THE STRIKE.

5. THIS DECISION TO CLOSE THE MANUFACTURING OPERATION IS CORROBORATED BY THE COMPANY'S SENDING LETTERS TO ITS CUSTOMERS CONFIRMING THE CLOSING AND BY THE COMPANY'S DISCONNECTING AND DISMANTLING ITS MACHINERY. AT THE TIME OF THE HEARING SOME OF THE MACHINERY HAD BEEN SHIPPED OUT OF THE COUNTRY, AND OTHER MACHINERY WAS READY TO BE PACKAGED AND REMOVED. THE MANUFACTURING OPERATION HAD CONTINUED TO PARTIALLY OPERATE IN ORDER TO COMPLETE THREE ORDERS, BUT IT WAS THE COMPANY'S INTENTION THAT ONCE THOSE ORDERS WERE FILLED TO COMPLETELY CLOSE THE MANUFACTURING OPERATION. THE DISMANTLING AND SHIPPING OF MACHINERY IS CON-

FIRMED BY THE EVIDENCE OF THE COMPLAINANT WHICH INDICATED THAT EMPLOYEES LOOKING INTO THE PLANT AT VARIOUS TIMES SAW MACHINERY STRIPPED AND TAKEN APART.

6. AS A RESULT OF ITS DECISION TO CLOSE ITS MANUFACTURING OPERATION, THE COMPANY ON MONDAY, MARCH 3 1969, GAVE A NOTICE TO THE COMPLAINANT WHICH STATED "THE FOLLOWING EMPLOYEES HAVE BEEN RELEASED FROM OUR EMPLOYMENT WITH EFFECT FROM 1ST MARCH 1969." THERE FOLLOWS A LIST OF THE NAMES OF THE EIGHTEEN EMPLOYEES WHO WERE ON STRIKE.

7. ALSO ON MARCH 3, 1969, SUBSEQUENT TO BEING ADVISED OF THE STRIKE ACTION, THE COMPANY MAILED THE FOLLOWING LETTER TO THE EMPLOYEES WHO WERE ON STRIKE:

" WEBSTER & HORSEFALL
(CANADA) LTD.
PENNS MILL
PRESCOTT, ONTARIO.

ATTENTION:

28TH FEBRUARY 1969

DEAR

OWING TO AN ACCUMULATION OF ADVERSE ECONOMICAL CONDITIONS THE COMPANY HAS DECIDED TO DISCONTINUE THE MANUFACTURE OF STEEL ROPE WIRE AT ITS PRESCOTT PLANT.

IT IS THEREFORE WITH REGRET THAT, EFFECTIVE THE 3RD MARCH 1969, YOUR SERVICES WILL NO LONGER BE REQUIRED.

WAGES, VACATION PAY AND UNEMPLOYMENT BOOKS WILL BE POSTED BY REGISTERED MAIL THE WEEK OF 10TH MARCH 1969.

LONDON LIFE GROUP PLAN #8633 WILL BE CANCELLED FROM 1ST MARCH 1969.

YOURS FAITHFULLY,
WEBSTER & HORSFALL (CANADA) LIMITED

J. S. GRANT
DIRECTOR"

8. THE COMPLAINANT SUBMITTED THAT THE ACTION OF THE RESPONDENT COMPANY TERMINATING THE EMPLOYER-EMPLOYEE RELATIONSHIP ALMOST IMMEDIATELY AFTER THE STRIKE HAD COMMENCED WAS IN VIOLATION OF SECTION 50(A), SECTION 50(C) AND SECTION 52 OF THE LABOUR RELATIONS ACT. THOSE SECTIONS PROVIDE:

"50. NO EMPLOYER, EMPLOYER'S ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYER'S ORGANIZATION,

- (A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OF ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;
- (c) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT. R.S.O. 1960, c. 202, s. 50; 1961-62, c. 68, s. 5.

52 NO PERSON, TRADE UNION OR EMPLOYERS' ORGANIZATION SHALL SEEK BY INTIMIDATION OR COERCION TO COMPEL ANY PERSON TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION OR OF AN EMPLOYERS' ORGANIZATION OR TO REFRAIN FROM EXERCISING ANY OTHER RIGHTS UNDER THIS ACT OR FROM PERFORMING ANY OBLIGATIONS UNDER THIS ACT. 1966. c. 76, s. 19."

9. THE ISSUE RAISED IN THE INSTANT CASE IS WHETHER OR NOT THE CONDUCT OF THE EMPLOYER WAS MOTIVATED BY AN ANTI-UNION PURPOSE. IT IS APPARENT FROM THE PROVISIONS OF THE LABOUR RELATIONS ACT RELIED UPON BY THE COMPLAINANT THAT MOTIVE IS AN ESSENTIAL INGREDIENT TO FOUND A VIOLATION OF THOSE SECTIONS. IN RECOGNIZING THAT MOTIVE OR INTENT MUST BE SHOWN WE RECOGNIZE THAT SPECIFIC EVIDENCE OF SUCH MOTIVE OR INTENT IS NOT ALWAYS AVAILABLE. WHERE SPECIFIC EVIDENCE IS AVAILABLE, THE BOARD WILL FIND THAT THE ACT HAS BEEN VIOLATED. HOWEVER, THERE ARE CASES WHERE NO SPECIFIC EVIDENCE OF INTENT IS AVAILABLE BUT THE CIRCUMSTANCES REQUIRE THE EMPLOYER TO JUSTIFY ITS ACTIONS AS BEING PROPER. RETAIL WHOLESALE AND DEPARTMENT STORE UNION V. NATIONAL AUTOMATIC VENDING CO. LTD. 63 CLLC 1161 (OLRB).

10. THERE IS ALSO CONDUCT WHICH IS SO INHERENTLY DISCRIMINATORY OR DESTRUCTIVE OF EMPLOYEE RIGHTS THAT THE EMPLOYER IN SUCH CASES MUST BE HELD TO INTEND THE VERY CONSEQUENCES WHICH ARE FORESEEABLE AND WHICH INESCAPABLY FLOW FROM ITS ACTIONS. THE MOTIVE OR

INTENT IS INHERENT IN THE CONDUCT ITSELF AND NO DIRECT PROOF OF SUBJECTIVE MOTIVE OR INTENT IS NECESSARY. SEE HOSEGOOD V. HOSEGOOD (1950), 66 T.L.R. 735 AT P. 738 PER DENNING L.J. REGINA V. ORTT (1969) O.R. 461 (ONTARIO CT. APP.); NLRB V. ERIE RESISTOR CORP. 47 LC P. 29,019; 373 U.S. 221 (U.S. SUP. CT.). THE EMPLOYER MAY THEN EXPLAIN, JUSTIFY, OR CHARACTERIZE "HIS ACTIONS AS SOMETHING DIFFERENT THAN THEY APPEAR ON THEIR FACE." N.L.R.B. V. ERIE RESISTOR CORP., SUPRA, AT LC P 29,020: U.S. 228.

11. IF WE CONSIDER THE PRESENT FACT SITUATION IN THE LIGHT OF THESE CONSIDERATIONS, WE ARE FACED WITH CONDUCT WHICH IS SO DESTRUCTIVE OF THE RIGHTS OF THE EMPLOYEES THAT THE RESPONDENT COMPANY MUST READILY HAVE FORESEEN AND THEREFORE INTENDED THE CONSEQUENCES OF ITS ACTIONS. ACCORDINGLY, THE ACTIONS OF THE COMPANY ARE SUFFICIENT TO ASCRIBE TO IT THE MOTIVE REQUIRED IN FOUNDING A VIOLATION OF THE ACT UNLESS THE RESPONDENT CAN EXPLAIN OR JUSTIFY ITS ACTIONS.

12. WE ARE OF THE OPINION THAT THE RIGHT TO STRIKE IS SO IMPORTANT AND FUNDAMENTAL TO THE SCHEME OF COLLECTIVE BARGAINING PROPOUNDED BY THE LABOUR RELATIONS ACT THAT ACTIVITIES OR CONDUCT DESTRUCTIVE OF THAT RIGHT CANNOT BE JUSTIFIED BY REASONS EITHER DEVOID OF LEGITIMATE BUSINESS PURPOSE OR LACKING IN SIGNIFICANT BUSINESS PURPOSE. IN THIS CASE THE COMPANY HAD PREVIOUSLY ENTERED INTO A COLLECTIVE AGREEMENT WITH THE UNION AND HAD BARGAINED FOR ITS RENEWAL EVEN OFFERING CERTAIN CONCESSIONS DURING BARGAINING; IT HAD OFFERED A WAGE INCREASE BASED ON INCREASED PRODUCTIVITY AND THERE WAS NO ALLEGATION THAT THIS OFFER WAS NOT BONA FIDE. THE DECISION TO CLOSE THE MANUFACTURING OPERATION WAS FINAL AND WAS NOT MOTIVATED BY ANY FUTURE BENEFIT TO THE EMPLOYER ARISING FROM NON-UNIONISM OR ANTI-UNIONISM; IT RESULTED FROM A CONFLUENCE OF ECONOMIC FACTORS - THE STRIKE BEING ONE OF THOSE FACTORS. WE FIND THAT THE REASON ADVANCED BY THE COMPANY FOR DISCHARGING THE EMPLOYEES WAS BOTH LEGITIMATE AND SUBSTANTIAL. C.F. NLRB V. GREAT DANE TRAILERS INC. 55 LC 19,195; 388 U.S. 26 (U.S. SUP. CT.) NLRB V. FLEETWOOD TRAILER CO. INC. 56 LC 20,492; 389 U.S. 375 (U.S. SUP. CT.)

13. THIS CASE IS READILY DISTINGUISHABLE FROM CANADIAN PACIFIC RAILWAY COMPANY V. ZAMBRI, 62 CLLC 450, 1962 S.C.R. 609 (SUP. CT. OF CANADA), AFF'G 1962 O.R. 554 (C.A.); AFF'G 1962 O.R. 108; REV'G 1961 CCH, LLR P. 15,372 AND THE ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000 CANADIAN UNION OF PUBLIC EMPLOYEES V. HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, 1969 MAY OLRB MTHLY. REP. 249. IN THE ZAMBRI CASE AND THE HYDRO CASE THERE WAS A FINDING OF ANTI-UNION MOTIVATION AND THE EMPLOYER DID NOT JUSTIFY OR EXPLAIN ITS ACTIONS. WE THEREFORE FIND THAT THE CLOSING OF THE BUSINESS AND THE SUBSEQUENT TERMINATION OF EMPLOYMENT OF THE STRIKERS WAS NOT MOTIVATED BY AN ANTI-UNION ANIMUS AND THE RESPONDENT COMPANY DID NOT VIOLATE THE PROVISIONS OF THE LABOUR RELATIONS ACT AS ALLEGED BY THE UNION. OUR DECISION HAS BUT ONE EXCEPTION WHICH

IS DISCUSSED IN PARAGRAPHS 16 AND 17 OF THESE REASONS.

14. HOWEVER, AT THIS POINT WE WISH TO COMMENT ON THE UNION'S ARGUMENT THAT THE DISCHARGE OF THE EMPLOYEES FOLLOWING SO CLOSELY ON THE HEELS OF THE STRIKE AND WITHOUT PRIOR DISCUSSION WITH THE UNION OF THE COMPANY'S ECONOMIC POSITION WAS SUFFICIENT TO FIND AN ANTI-UNION MOTIVE. ALTHOUGH THE EMPLOYER SUGGESTED THAT IT WITHHELD THIS INFORMATION DURING THE BARGAINING PROCESS BECAUSE IT WAS CONCERNED THAT IF THE INFORMATION WAS REVEALED IT MIGHT BE CONSTRUED AS A THREAT PURSUANT TO SECTION 50(c), WE ARE OF THE OPINION THAT AN EMPLOYER MAY DURING BARGAINING PROPERLY INFORM THE UNION OF THE ECONOMIC CONSEQUENCES OF STRIKE ACTION IN LANGUAGE THAT WOULD NOT BE CONSTRUED AS A THREAT. IN FACT, FAILURE TO INFORM THE UNION AND TO DISCUSS THE SITUATION MAY RESULT IN THE EMPLOYER BARGAINING IN BAD FAITH AND MAY BE A MAJOR CONSIDERATION WHEN THE BOARD ASSESSES MOTIVE IN A SIMILAR SITUATION. AS THIS TYPE OF SITUATION HAS ARISEN FOR THE FIRST TIME BEFORE THIS BOARD WE HAVE NOT ASSIGNED THE WEIGHT TO THESE FACTS THAT WE MAY IN FUTURE CASES.

15. WHEN WE CONSIDER THE REASONS FOR CLOSING THE MANUFACTURING OPERATIONS, WE ARE FURTHER OF THE OPINION THAT SECTION 58 OF THE LABOUR RELATIONS ACT IS APPLICABLE TO THIS SITUATION. SECTION 58 STATES:

58. "NOTHING IN THIS ACT PROHIBITS ANY
 SUSPENSION OR DISCONTINUANCE FOR CAUSE
 OF AN EMPLOYER'S OPERATIONS OR THE
 QUITTING OF EMPLOYMENT FOR CAUSE IF THE
 SUSPENSION, DISCONTINUANCE OR QUITTING
 DOES NOT CONSTITUTE A LOCK-OUT OR STRIKE.
 R.S.O. 1960, c. 202, 2.58."

SINCE THIS WAS NOT A LOCK-OUT AND WAS A DISCONTINUANCE OF OPERATIONS FOR CAUSE, WE ARE SATISFIED THAT THE ACTIONS OF THE RESPONDENT ARE PERMISSIBLE PURSUANT TO THE PROVISIONS OF SECTION 58.

16. AS WE INDICATED OUR DECISION HAS BUT ONE EXCEPTION. THE EMPLOYER CONTINUES TO OPERATE THE IMPORTING PORTION OF ITS BUSINESS WITH TWO EMPLOYEES. THE WORK BEING DONE BY THESE EMPLOYEES IS WORK WHICH WAS NORMALLY PERFORMED BY PERSONNEL IN THE BARGAINING UNIT. ONE EMPLOYEE HAS CONTINUED IN HIS POSITION AND DECLINED TO GO ON STRIKE, BUT THE OTHER POSITION WAS FILLED BY A SUPERVISORY PERSON, I.E. THE FOREMAN. WE ARE SATISFIED THAT IN ESSENCE, ONE OF THE EMPLOYEES HAS BEEN DISCHARGED BECAUSE HIS POSITION WAS FILLED BY THE FOREMAN. THE ISSUE THEREFORE IS WHETHER THE EMPLOYER CAN ARRANGE HIS NON-STRIKING EMPLOYEES, INCLUDING SUPERVISORY PERSONNEL, TO REPLACE A STRIKING EMPLOYEE AND THEN SUBSEQUENTLY DISCHARGE THAT STRIKING EMPLOYEE.

17. WE ARE OF THE OPINION THAT A LAWFUL STRIKE BY EMPLOYEES DOES NOT AUTOMATICALLY TERMINATE AN EMPLOYER'S BUSINESS, AND THAT AN EMPLOYER FACED WITH A STRIKE MAY HIRE REPLACEMENTS TO CONTINUE HIS BUSINESS. HOWEVER, IT IS CLEAR THAT THE ACT BY REASON OF SECTION 1(2) CONTEMPLATES THE CONTINUED STATUS OF STRIKERS AS EMPLOYEES AND FURTHER CONTEMPLATES THE RETURN TO WORK BY STRIKERS.

(1) SECTION 1(2) OF THE LABOUR RELATIONS ACT PROVIDES:

(1)(2) "FOR THE PURPOSES OF THIS ACT,
NO PERSON SHALL BE DEEMED TO HAVE
CEASED TO BE AN EMPLOYEE BY REASON
ONLY OF HIS CEASING TO WORK FOR HIS
EMPLOYER AS A RESULT OF A LOCK-OUT
OR STRIKE OR BY REASON ONLY OF HIS
BEING DISMISSED BY HIS EMPLOYER
CONTRARY TO THIS ACT OR TO A
COLLECTIVE AGREEMENT."

WHILE SECTION 1(2) APPEARS TO BE DESCRIPTIVE OF A CONTINUING STATUS, WE ARE OF THE OPINION THAT IT SERVES AS A YARDSTICK FOR THE MEASUREMENT OF BOTH EMPLOYEE AND EMPLOYEE CONDUCT SUBSEQUENT TO THE STRIKE. THE RIGHTS AND OBLIGATIONS INHERENT IN THAT CONTINUED STATUS AND THEIR EXACT NATURE WILL REQUIRE AN EVOLUTIONARY FACTUAL ANALYSIS, BUT SUFFICE IT TO SAY THAT AN EMPLOYER CANNOT DISCHARGE AN EMPLOYEE MERELY BECAUSE THE EMPLOYEE HAS GONE ON STRIKE AND ANOTHER HAS BEEN HIRED TO DO HIS WORK. WE ARE FURTHER OF THE OPINION THAT AN EMPLOYER CANNOT ARRANGE HIS NON-STRIKING EMPLOYEES, INCLUDING SUPERVISORY PERSONNEL, TO REPLACE A STRIKING EMPLOYEE AND SUBSEQUENTLY DISCHARGE THAT STRIKING EMPLOYEE; THE EFFECT OF THAT ACTION IS TO CAUSE ONE PERSON TO CEASE TO BE AN EMPLOYEE BY REASON ONLY OF HIS BEING ON STRIKE. ACCORDINGLY, WE FIND THAT THAT ACTION BY THE RESPONDENT IS IN VIOLATION OF THE LABOUR RELATIONS ACT IN THE CASE OF ONE EMPLOYEE.

18. WE THEREFORE HOLD THAT ONE OF THE EMPLOYEES WHO HAS BEEN DISCHARGED RETAINS STATUS AS AN EMPLOYEE, BUT BECAUSE THAT EMPLOYEE IS ON STRIKE HE IS NOT ENTITLED TO ANY COMPENSATION. ACCORDINGLY, THE UNION AND THE EMPLOYER SHALL MEET WITHIN SEVEN DAYS TO DETERMINE WHICH OF THE DISCHARGED EMPLOYEES HAS STATUS AND, FAILING AGREEMENT, EITHER PARTY MAY APPLY TO THIS BOARD FOR DETERMINATION OF THAT PARTICULAR ISSUE. WITH THE EXCEPTION OF THE ONE EMPLOYEE WHO CONTINUES TO HAVE STATUS, THE COMPLAINT IN ALL OTHER RESPECTS IS DISMISSED.

(1) SEE ALSO RAND; ROYAL COMMISSION INQUIRY INTO LABOUR DISPUTES (ONTARIO), QUEEN'S PRINTER TORONTO P. 22 TO 27; WOODS; REPORT OF THE TASK FORCE LABOUR RELATIONS, QUEEN'S PRINTER, OTTAWA P. 175, 176. - DISCUSSION OF THE CONCEPTS INVOLVED IN THE STATUS OF STRIKING EMPLOYEES.

DISSENT OF BOARD MEMBER F. W. MURRAY: SEPTEMBER 8, 1969.

1. I AM IN ACCORD WITH THE DECISION OF THE MAJORITY IN DISMISSING THE APPLICATION IN RESPECT TO THE EMPLOYEES, AND IT IS ONLY IN RESPECT TO THE DECISION TO RETAIN THE STATUS OF ONE EMPLOYEE WITH WHICH I AM IN DISAGREEMENT. THEREFORE, I AGREE WITH THE DECISION UP TO AND INCLUDING PARAGRAPH 13 EXCEPT FOR THE LAST SENTENCE OF THAT PARAGRAPH.

2. ON THE EVIDENCE I WOULD NOT HAVE FOUND THAT THE JOB OF THE FORMER FOREMAN AT THE DATE OF THE HEARING WOULD HAVE FALLEN WITHIN THE SCOPE OF THE WORK PERFORMED BY EMPLOYEES IN THE BARGAINING UNIT. ALBEIT THE EVIDENCE DISCLOSED THAT SOME OF THE WORK NOW PERFORMED BY THE FORMER FOREMAN WAS WORK NORMALLY PERFORMED BY PERSONNEL IN THE BARGAINING UNIT, I CONCLUDED THAT THE PRESENT JOB NOW CONTAINS CERTAIN CLERICAL WORK SO THAT THERE WAS IN EFFECT A NEW JOB CREATED BY THIS MAJOR CHANGE IN BUSINESS FUNCTION.

3. MOREOVER, THE MAJORITY DECISION REQUIRES AN ANTI-UNION MOTIVE TO FIND A VIOLATION OF THE ACT. I DO NOT AGREE THAT SUCH AN ANTI-UNION MOTIVE CAN BE FOUND WITH RESPECT TO AN UNKNOWN PERSON.

4. FOR THESE REASONS I WOULD NOT HAVE FOUND THAT ONE EMPLOYEE'S STATUS SHOULD BE CHANGED AND ACCORDINGLY I WOULD HAVE DISMISSED THE APPLICATION IN TOTO.

16383-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (COMPLAINANT) V. HOME JUICE CO. (DIVISION OF JAY ZEE
FOOD PRODUCTS LTD.) (RESPONDENT).

- AND -

16397-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO: CLC (COMPLAINANT) V. HOME JUICE CO. (DIVISION OF JAY ZEE
FOOD PRODUCTS LTD.) (RESPONDENT).

- AND -

16404-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (COMPLAINANT) V. HOME JUICE CO. (DIVISION OF JAY ZEE
FOOD PRODUCTS LTD.) (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: DONALD G. COLLINS FOR THE
APPLICANT, AND M. BURGARD FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 5, 1969.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT ALLEGING THAT JAMES PAUL WHATMORE, HUGH LEADBETTER AND ROBERT FLEMING WERE DISCHARGED FOR UNION ACTIVITY.

2. WE ARE SATISFIED FROM THE EVIDENCE THAT JAMES PAUL WHATMORE AND HUGH LEADBETTER WERE DISCHARGED BY THE RESPONDENT FOR UNION ACTIVITY CONTRARY TO THE LABOUR RELATIONS ACT AND ACCORDINGLY WE ORDER THAT THEY BE REINSTATED TO THEIR EMPLOYMENT WITH THE FOLLOWING COMPENSATION:

JAMES PAUL WHATMORE (\$108.00 PER WEEK) TOTAL COMPENSATION -
\$620.00

MR. WHATMORE EARNED APPROXIMATELY
\$280.00 DURING THE PERIOD HE WAS
UNEMPLOYED WHICH HAS BEEN DEDUCTED
FROM THE TOTAL COMPENSATION.

HUGH LEADBETTER (\$123.00 PER WEEK) TOTAL COMPENSATION -
\$938.00

MR. LEADBETTER EARNED APPROXIMATELY
\$46.00 DURING THE PERIOD HE WAS
UNEMPLOYED WHICH HAD BEEN DEDUCTED
FROM THE TOTAL COMPENSATION.

3. THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH FOR THE PURPOSE OF AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND THE EMPLOYMENT BENEFITS SUSTAINED BY THE AFORESAID AGGRIEVED PERSONS BETWEEN THE DATE OF THE HEARING ON AUGUST 22ND, 1969, AND THE DATE OF REINSTATEMENT BY THE RESPONDENT. IN DEFAULT OF AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS FROM THE DATE HERETO AS TO THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND PAYABLE TO THE AGGRIEVED PERSONS, EITHER PARTY MAY APPLY TO HAVE THE BOARD MAKE SUCH DETERMINATION OF THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND WHICH ARE PAYABLE.

4. WITH RESPECT TO THE AGGRIEVED FLEMING, ALTHOUGH THERE ARE CERTAIN FACTORS IN HIS COMPLAINT SIMILAR TO THE COMPLAINTS OF MR. WHATMORE AND MR. LEADBETTER, THE EVIDENCE ADDUCED ON HIS BEHALF DOES NOT SATISFY THE REQUIRED ONUS. MR. FLEMING TESTIFIED THAT HE WAS DISCHARGED ON JUNE 27TH FOR UNION ACTIVITY, WHILE THE RESPONDENT DENIED THAT HE WAS DISCHARGED AT ALL. MRS. DORIS PARTINGTON WHO IS EMPLOYED BY THE RESPONDENT AS A BOOKKEEPER TESTIFIED AS TO A CONVERSATION SHE OVERHEARD BETWEEN MR. JAMAIL, AN OFFICER OF THE COMPANY AND MR. FLEMING ON JULY 19TH, APPROXIMATELY THREE WEEKS AFTER THE ALLEGED DISCHARGE. MR. JAMILA SAID TO MR. FLEMING,

"WHY DID YOU LEAVE? WHY DIDN'T YOU
COME IN ON JUNE 28TH?"

MR. FLEMING REPLIED,

"I WAS MAD. I'M SORRY NOW; AT THE
TIME I WAS MAD AND DIDN'T COME IN.
I FELT THE BOYS HAD A LEGITIMATE
COMPLAINT. I'M A FOLLOWER NOT A
LEADER SO I WENT ALONG WITH THE BOYS."

WHEN MR. FLEMING WAS CALLED TO TESTIFY IN REPLY, HE CORROBORATED
THIS CONVERSATION.

5. WE THEREFORE CONCLUDE THAT THE EVIDENCE SUBSTANTIATES
THE RESPONDENT'S POSITION THAT MR. FLEMING WAS NOT DISCHARGED AT
ALL AND THE COMPLAINT WITH RESPECT TO HIM IS THEREFORE DISMISSED.

16484-69-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA (COMPLAINANT) V. P. OUIMET & SON CONSTRUCTION
(RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: F. A. ACTON AND L. P. SHAW
FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 11, 1969.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE
LABOUR RELATIONS ACT ALLEGING THAT THE AGGRIEVED PERSONS HAD
BEEN DISCHARGED FOR UNION ACTIVITY. THE RESPONDENT DID NOT
APPEAR AT THIS HEARING ALTHOUGH DULY SERVED WITH NOTICE.

2. IT APPEARS THAT THE COMPLAINANT MADE AN APPLICATION
FOR CERTIFICATION ON JULY 9TH, 1969 AND THAT THE RESPONDENT
RECEIVED NOTICE OF THE APPLICATION ON JULY 11TH, 1969. ON
JULY 11TH, 1969 BOTH MR. MELOCHE AND MR. TESSIER, THE AGGRIEVED
PERSONS, WERE APPROACHED BY THE SAME MEMBER OF MANAGEMENT AND
ASKED TO SIGN A PAPER INDICATING THAT THEY WERE SATISFIED WITH
THE COMPANY. THEY WERE BOTH TOLD THAT IF THEY REFUSED TO SIGN
THEY WOULD BE DISCHARGED. BOTH REFUSED AND BOTH WERE DISCHARGED.
IN MR. MELOCHE'S CASE HE WAS ALSO TOLD, "IF YOU SUPPORT THE
UNION CHECK OUT RIGHT NOW."

3. WHEN WE CONSIDER THE CIRCUMSTANCES AS TO THE TIME AND MANNER OF DISCHARGE AND THE STATEMENTS MADE, WE ARE OF THE OPINION THAT BOTH MR. TESSIER AND MR. MELOCHE HAVE BEEN DEALT WITH CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT AND WE ORDER THAT THEY BE REINSTATED TO THEIR FORMER EMPLOYMENT WITH COMPENSATION AS FOLLOWS:

OVIDE MELOCHE (\$2.50 PER HOUR AT 48 HOURS PER WEEK)
TOTAL COMPENSATION - \$686.40

MR. MELOCHE EARNED APPROXIMATELY \$93.60 DURING THE PERIOD HE WAS UNEMPLOYED WHICH HAS BEEN DEDUCTED FROM THE TOTAL COMPENSATION.

MAURICE TESSIER (\$2.50 PER HOUR AT 48 HOURS PER WEEK)
TOTAL COMPENSATION - \$420.00

THE PERIOD FOR WHICH MR. TESSIER HAS BEEN COMPENSATED IS AUGUST 3RD TO AUGUST 27TH.

4. THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH FOR THE PURPOSE OF AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND THE EMPLOYMENT BENEFITS SUSTAINED BY THE AFORESAID AGGRIEVED PERSONS BETWEEN THE DATE OF THE HEARING ON AUGUST 27TH, 1969 AND THE DATE OF REINSTATEMENT BY THE RESPONDENT. IN DEFAULT OF AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS FROM THE DATE HERETO AS TO THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND PAYABLE TO THE AGGRIEVED PERSONS, EITHER PARTY MAY APPLY TO HAVE THE BOARD MAKE SUCH DETERMINATION OF THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND WHICH ARE PAYABLE.

INDEXED ENDORSEMENTS - SECTION 79A

16462-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION LOCAL 1002, A.F.L.:C.I.O.:C.L.C. (TRADE UNION) AND GRAYS DEPARTMENT STORE LIMITED (FORMERLY: H. GRAY LIMITED) (EMPLOYER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: D. G. COLLINS, AL GLEASON, FOR THE TRADE UNION; J. DOUGLAS, C. H. ROSEN FOR THE EMPLOYER.

DECISION OF THE BOARD: SEPTEMBER 16, 1969.

1. THIS IS A REFERENCE TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION

IS WHETHER THE MINISTER OF LABOUR HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. IT APPEARED FROM THE EVIDENCE THAT THE APPLICANT TRADE UNION HAD A COLLECTIVE AGREEMENT WITH H. GRAY LIMITED WHICH HAD CARRIED ON THE BUSINESS OF A DEPARTMENT STORE. ON OR ABOUT THE 5TH DAY OF MARCH 1969, H. GRAY LIMITED AND OTHERS ENTERED INTO AN AGREEMENT WITH TRUSTEES FOR A COMPANY TO BE INCORPORATED. (THE COMPANY WAS SUBSEQUENTLY INCORPORATED AND IS THE PRESENT RESPONDENT). THE AGREEMENT WAS FOR THE SALE OF CERTAIN ASSETS OF THE BUSINESS OF H. GRAY LIMITED, AND INCLUDED THE NAME, GOODWILL, CHATTELS, FIXTURES, ACCOUNTS RECEIVABLE AND "SUCH OTHER ITEMS AS NECESSARY TO CARRY ON THE BUSINESS OF THE DEPARTMENT STORE." THE AGREEMENT PROVIDED INTER ALIA:

"THE VENDORS AGREE TO SELL TO THE PURCHASERS,
THE FOLLOWING ASSETS ----

(c) THE GOODWILL OF THE BUSINESS, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BENEFIT OF ALL EXISTING CONTRACTS AND ENGAGEMENTS, ALL TRADE MARKS, TRADE NAMES, COPYRIGHTS, TRADE DESIGNS AND LICENCES CONNECTED WITH THE BUSINESS LEASE ON THE BUSINESS PREMISES, THE FIRM NAME "GRAY'S DEPARTMENT STORE" WITH THE EXCLUSIVE RIGHT TO REPRESENT "GRAY'S DEPARTMENT STORE" AS CARRYING ON THE BUSINESS AS HERETOFORE CARRIED ON BY THE VENDORS AND THE RIGHT TO USE ANY WORDS INDICATING THAT THE SAID BUSINESS IS SO CARRIED ON."

"5(1) THE VENDOR AGREES THAT DURING THE PERIOD FOLLOWING EXECUTION OF THE WITHIN AGREEMENT AND THE CLOSING OUT OF THE SAID TRANSACTION, THAT THEY WILL NOT, EITHER BY ITSELF OR BY MEANS OF ANY OTHER PERSON, DO OR CAUSE TO BE DONE, ANY WILFUL ACT OR THING TO THE PREJUDICE OF THE BUSINESS."

IN ADDITION, THERE ARE CERTAIN OTHER RELEVANT PROVISIONS WHICH INCLUDE:

(A) THE ASSUMPTION BY THE PURCHASER OF CERTAIN BUSINESS CONTRACTS ENTERED INTO BY H. GRAY LIMITED;

(B) A REQUIREMENT THAT THE VENDOR COMPLY WITH THE BULK SALES ACT (ONTARIO);

- (c) A RESTRICTION ON THE RIGHT OF THE
VENDOR COMPANY AND ITS SHARE-HOLDERS
TO CARRY ON A DEPARTMENT STORE BUSINESS
COMMONLY REFERRED TO AS A NON COMPETITION
CLAUSE.

3. THE RESPONDENT SUBMITTED THAT IT WAS NOT REQUIRED TO BARGAIN WITH THE APPLICANT TRADE UNION WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT BECAUSE IT WAS NOT A SUCCESSOR EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT; CONSEQUENTLY, THE MINISTER OF LABOUR DOES NOT HAVE THE AUTHORITY TO APPOINT A CONCILIATION OFFICER. THE POSITION OF THE RESPONDENT TURNS ON WHETHER OR NOT THERE WAS A SALE OF BUSINESS WITHIN THE MEANING OF SECTION 47A.

4. THE RESPONDENT SUBMITTED THAT IT WAS ITS INTENTION TO UTILISE THE ASSETS OF THE BUSINESS TO OPERATE A FRANCHISE OPERATION, WITH LESSEES ASSUMING THE RESPONSIBILITY OF CARRYING ON CERTAIN LIMITED BUT SIMILAR BUSINESS OPERATIONS TO THOSE FORMERLY CARRIED ON BY INDIVIDUAL DEPARTMENTS OF H. GRAY LIMITED. THE RESPONDENT SUBMITS THAT IT IS PRESENTLY ENGAGED IN SUCH A LEASING OPERATION AND HAS ADVISED THE BOARD THAT IT HAS ENTERED INTO SPECIFIC LEASES E.G. MAHER SHOES LTD.

5. THE ISSUE DOES NOT TURN ON THE MANNER IN WHICH THE RESPONDENT INTENDS TO UTILISE THE PURCHASED ASSETS, BUT WHETHER OR NOT THERE HAS BEEN A SALE OF BUSINESS. WHERE THE BUSINESS SOLD HAS CHANGED ITS CHARACTER SO THAT IT IS SUBSTANTIALLY DIFFERENT FROM THE BUSINESS OF THE PREDECESSOR EMPLOYER, THE SUCCESSOR EMPLOYER HAS AN APPROPRIATE REMEDY PURSUANT TO SECTION 47A (4) OF THE LABOUR RELATIONS ACT WHICH PROVIDES:

"THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED MADE WITHIN THIRTY DAYS AFTER THE TRADE UNION HAS GIVEN A NOTICE UNDER SUBSECTION 2, TERMINATE THE BARGAINING RIGHTS OF THE TRADE UNION THAT HAS GIVEN NOTICE IF, IN THE OPINION OF THE BOARD, THE PERSON TO WHOM THE BUSINESS WAS SOLD HAS CHANGED ITS CHARACTER SO THAT IT IS SUBSTANTIALLY DIFFERENT FROM THE BUSINESS OF THE PREDECESSOR EMPLOYER."

WE ARE SATISFIED FROM THE EVIDENCE THAT THE ORIGINAL TRANSACTION CONSTITUTES A SALE OF BUSINESS WITHIN THE MEANING OF SECTION 47A AND, ACCORDINGLY, WE RESPECTFULLY REPORT TO THE MINISTER THAT THE APPLICANT TRADE UNION IS ENTITLED TO GIVE GRAYS DEPARTMENT STORE

LIMITED NOTICE OF ITS DESIRE TO BARGAIN AND THEREFORE THE MINISTER OF LABOUR HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

16558-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002 A.F. OF L. - C.I.O. (TRADE UNION) AND ELKS DEPARTMENT STORE LIMITED (EMPLOYER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: H. BUCHANAN, D. COLLINS,
FOR THE TRADE UNION; W. R. MAXWELL FOR THE EMPLOYER.

DECISION OF THE BOARD: SEPTEMBER 16, 1969.

1. THIS IS A REFERENCE TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION IS WHETHER THE MINISTER OF LABOUR HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. THE RESPONDENT SUBMITTED THAT IT WAS NOT REQUIRED TO BARGAIN WITH THE APPLICANT TRADE UNION WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT BECAUSE IT WAS NOT A SUCCESSOR EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT; CONSEQUENTLY, THE MINISTER OF LABOUR DOES NOT HAVE THE AUTHORITY TO APPOINT A CONCILIATION OFFICER. THE POSITION OF THE RESPONDENT TURNS ON WHETHER OR NOT THERE WAS A SALE OF BUSINESS WITHIN THE MEANING OF SECTION 47A.

3. HAVING REGARD TO OUR DECISION IN RETAIL, WHOLESALE AND DEPARTMENT STORE UNION LOCAL 1002, A.F.L.: C.I.O.: C.L.C., AND GRAYS DEPARTMENT STORE LIMITED, BOARD FILE NO. 16462-69-M, DATED 16TH SEPTEMBER 1969, WE ARE SATISFIED THAT THERE WAS NOT A SALE OF BUSINESS BETWEEN H. GRAY LIMITED AND THE RESPONDENT MAHER SHOES LIMITED. ACCORDINGLY, WE RESPECTFULLY REPORT TO THE MINISTER THAT THE APPLICANT TRADE UNION WAS NOT ENTITLED TO GIVE THE RESPONDENT, MAHER SHOES LIMITED, NOTICE OF ITS DESIRE TO BARGAIN AND THEREFORE THE MINISTER DOES NOT HAVE THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

16559-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002 A.F. OF L. - C.I.O. (TRADE UNION) AND MAHER SHOES LIMITED (EMPLOYER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: H. BUCHANAN, D. COLLINS FOR THE TRADE UNION; J. D. LAWSON, GEORGE TRAVELLE FOR THE EMPLOYER.

DECISION OF THE BOARD: SEPTEMBER 16, 1969.

1. THIS IS A REFERENCE TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION IS WHETHER THE MINISTER OF LABOUR HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. THE RESPONDENT SUBMITTED THAT IT WAS NOT REQUIRED TO BARGAIN WITH THE APPLICANT TRADE UNION WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT BECAUSE IT WAS NOT A SUCCESSOR EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT; CONSEQUENTLY, THE MINISTER OF LABOUR DOES NOT HAVE THE AUTHORITY TO APPOINT A CONCILIATION OFFICER. THE POSITION OF THE RESPONDENT TURNS ON WHETHER OR NOT THERE WAS A SALE OF BUSINESS WITHIN THE MEANING OF SECTION 47A.

3. HAVING REGARD TO OUR DECISION IN RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002, A.F.L.: C.I.O.: C.L.C. AND GRAYS DEPARTMENT STORE LIMITED, BOARD FILE NO. 16462-69-M, DATED 16TH SEPTEMBER 1969, WE ARE SATISFIED THAT THERE WAS NOT A SALE OF A BUSINESS BETWEEN H. GRAY LIMITED AND THE RESPONDENT MAHER SHOES LIMITED. ACCORDINGLY, WE RESPECTFULLY REPORT TO THE MINISTER THAT THE APPLICANT TRADE UNION WAS NOT ENTITLED TO GIVE THE RESPONDENT, MAHER SHOES LIMITED, NOTICE OF ITS DESIRE TO BARGAIN AND THEREFORE THE MINISTER DOES NOT HAVE THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

16292-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT).

- AND -

16293-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
A. MAIN AND F. W. MURRAY.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER A. MAIN:
SEPTEMBER 16, 1969.

IN THE ABOVE TWO CASES THE BOARD ENDORSED THE RECORD AS FOLLOWS:

1. THE RESPONDENT REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF JULY 24, 1969. THE REQUEST IS EMBODIED IN A LETTER DATED JULY 28, 1969 READING AS FOLLOWS:

"ON BEHALF OF OUR CLIENT, FRIEDMAN'S DEPARTMENT STORE OPERATED BY SOO JOBBING COMPANY LIMITED, WE WOULD RESPECTFULLY REQUEST A RECONSIDERATION OF THE BOARD'S DECISION IN THE ABOVE-CAPTIONED CASE DATED JULY 24, 1969.

IT IS SUBMITTED THAT SECTION 6 OF THE BOARD'S RULES OF PROCEDURE IS MANDATORY AND AS SUCH MUST BE STRICTLY INTERPRETED AND IS NOT SUBJECT TO VARIANCE AT THE BOARD'S DISCRETION. IT IS FURTHER SUBMITTED THAT IF FORM 8 IS NOT FILED BY AN APPLICANT IN ACCORDANCE WITH THE TIME PERIOD AS SET OUT IN SECTION 6 OF THE SAID RULES OF PROCEDURE, THERE IS A SUBSTANTIVE DEFECT IN THE APPLICATION FOR CERTIFICATION WARRANTING DISMISSAL OF SUCH APPLICATION.

WE WOULD ALSO SUBMIT TO THE BOARD THAT SECTION 57(2) OF THE BOARD'S RULES OF PROCEDURE IS A SECTION DESIGNED TO PERMIT A PARTY TO MAKE APPLICATION TO THE BOARD FOR ENLARGING THE TIME PRESCRIBED BY THE SAID RULES OF PROCEDURE AFTER THE EXPIRATION OF THE TIME PRESCRIBED; THE SAID SECTION DOES NOT EXTEND TO THE BOARD THE POWER TO ENLARGE SUCH PRESCRIBED TIME LIMITS ON ITS OWN INITIATIVE. WITH REFERENCE TO THE LATTER POINT RAISED, WE WOULD RESPECTFULLY REMIND THE BOARD THAT NO SUBMISSIONS WERE MADE BY THE APPLICANT AT THE HEARING OF THIS CASE REQUESTING RELIEF UNDER SECTION 57(2)."

2. THE APPLICANT IN ITS REPLY TO THE FOREGOING STATED THAT IT HAD COMPLIED WITH THE BOARD'S INSTRUCTIONS WITH RESPECT TO FORM 8 AND ASKED THAT THE REQUEST FOR RECONSIDERATION BE DENIED.

3. FULL OPPORTUNITY WAS AFFORDED THE RESPONDENT AT THE HEARING TO OFFER ARGUMENT IN SUPPORT OF ITS MOTION FOR DISMISSAL OF THE APPLICATION AND IT DID IN FACT OFFER SUBSTANTIALLY THE SAME ARGUMENTS AS NOW APPEAR IN THE SECOND PARAGRAPH OF ITS LETTER. THESE SUBMISSIONS WERE GIVEN FULL CONSIDERATION BY THE BOARD PRIOR TO THE MAKING OF THE DECISION WHICH IT IS NOW ASKED TO REVIEW.

4. THE ARGUMENTS MADE IN THE THIRD PARAGRAPH OF THE LETTER WERE RAISED ONLY OBLIQUELY AT THE HEARING WHEN THE BOARD IN REPLY TO THE OBJECTION COMMENTED THAT IT CUSTOMARILY ENLARGED THE TIME FOR FILING FORM 8 AT THE HEARING AND THE RESPONDENT REPLIED THAT IN ITS OPINION, THE BOARD OUGHT NOT TO DO SO.

5. THE BOARD RESERVED ITS DECISION AT THE CONCLUSION OF THE CASE UP TO WHICH POINT NO REFERENCE HAD BEEN MADE SPECIFICALLY TO SECTION 57(2) OF THE BOARD'S RULES WITH RESPECT TO ITS PRACTICE REFERRED TO ABOVE. IT IS ONLY IN THE DECISION THAT REFERENCE WAS MADE TO THAT SECTION.

6. WHILE IT MIGHT REASONABLY BE SAID THAT COUNSEL FOR THE RESPONDENT OUGHT TO HAVE ANTICIPATED THE NECESSITY OF REFERENCE TO SECTION 57(2) OF THE RULES IN VIEW OF THE NATURE OF HIS MOTION AND SHOULD THEREFORE BE PRECLUDED FROM ADVANCING WHAT AMOUNTS TO FRESH ARGUMENT, STIMULATED BY THE DECISION, AT THIS STAGE IN THE PROCEEDINGS, AS IS USUALLY THE CASE, WE ARE OF THE OPINION THAT IN THE CIRCUMSTANCES THE BOARD OUGHT TO DEAL WITH THE MATTER.

7. IT IS QUITE TRUE THAT THE APPLICANT DID NOT INITIATE ANY MOTION TO HAVE THE BOARD EXTEND THE TIME FOR FILING FORM 8. IT DID, HOWEVER, IN RESPONSE TO THE MOTION FOR DISMISSAL, REMIND THE BOARD THAT IT CUSTOMARILY ACCEPTED FORM 8 UP TO THE TIME OF THE HEARING AND REQUESTED THAT IT DO SO IN THIS INSTANCE. IN VIEW OF THIS REQUEST OF THE APPLICANT AND HAVING IN MIND THE PRINCIPLES SET OUT IN GENAIRE LIMITED V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND ONTARIO LABOUR RELATIONS BOARD (1958) EX PARTE BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 268, 69 C.L.C.C. 91 14, 181, THE BOARD FEELS ITS APPLICATION OF SECTION 57(2) OF THE RULES IS CORRECT AND DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION HEREIN DATED JULY 24, 1969.

8. THE RESPONDENT'S REQUEST IS THEREFORE DENIED.

DECISION OF BOARD MEMBER F. W. MURRAY: SEPTEMBER 16, 1969.

1. I DISSENT.

2. I WOULD HAVE GRANTED THE RESPONDENT'S REQUEST FOR THE BOARD TO RECONSIDER THE BOARD'S DECISION IN THIS CASE DATED JULY 24, 1969.

3. THE RESPONDENT DID AT THE HEARING QUESTION THE BOARD'S AUTHORITY TO ENLARGE THE TIME FOR FILING FORM 8 AND I CONCUR IN THE OBJECTION RAISED AT THAT TIME IN THAT SECTION 57(2) OF THE BOARD'S RULES OF PROCEDURE DO NOT EXTEND TO THE BOARD THE AUTHORITY TO ENLARGE SUCH PRESCRIBED TIME LIMIT ON ITS OWN INITIATIVE.

4. ACCORDINGLY, I WOULD HAVE GRANTED THE REQUEST FOR RECONSIDERATION.

15422-68-R: RICHARD TIFFIN, MARY MASON, RONALD MCLEAN, MANUEL CAVACAS, REGINA VROMAN, AND TOM SCHINKELSHOEK, AND OTHERS (APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (RESPONDENT) V. NORTH AMERICAN PLASTICS CO. LTD. (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: K. E. HANSEN, RICHARD TIFFIN, TOM SCHINKELSHOEK, REGINA VROMAN FOR THE APPLICANT; LENNOX MCLEAN, KENNETH SIMPSON, TED OANA FOR THE RESPONDENT; F. W. KNIGHT FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 16, 1969.

1. FOLLOWING THE ISSUING OF AN INTERIM REPORT OF THE EXAMINER IN THIS MATTER DEALING WITH THE LISTS OF EMPLOYEES INVOLVED OR ALLEGED TO BE INVOLVED, THE BOARD CONDUCTED A HEARING ON JULY 9TH 1969 TO RECEIVE THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE INTERIM REPORT, AND FOR THE PURPOSE OF HEARING ARGUMENT AS TO THE PROCEDURE THAT MIGHT BE ADOPTED TO SETTLE THE DIFFERENCES REMAINING WITH RESPECT TO THE LISTS OF EMPLOYEES, AND FOR THE PURPOSE OF HEARING ARGUMENT AS TO WHY THE BOARD SHOULD CONSIDER THE RESPONDENT'S OBJECTION TO THE TIMELINESS OF THE APPLICATION.

2. AFTER A CAREFUL PERUSAL OF THE INTERIM REPORT AND THE ATTENDANT SCHEDULES, AND HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT ON THE BASIS OF WHATEVER LIST OF EMPLOYEES MIGHT SUBSEQUENTLY BE FINALLY DETERMINED BY THE BOARD, AS OF THE DATE OF THE APPLICATION, THE APPLICANT WOULD HAVE MORE THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WHO HAVE SIGNED A PETITION IN SUPPORT OF THE APPLICATION. WE ARE OF THE OPINION THEREFORE, THAT SINCE IT APPEARS THAT THE APPLICANT HAS SATISFIED THE CONDITION PRECEDENT AS TO THE PERCENTAGE OF EMPLOYEES IN THE BARGAINING UNIT SET OUT IN SECTION 43 OF THE LABOUR RELATIONS ACT, NO USEFUL PURPOSE WOULD BE SERVED TO CONTINUE THE EXAMINATION INTO THE LISTS. THE BOARD THEREFORE TERMINATES THE APPOINTMENT OF J. R. HENDERSON TO INQUIRE INTO THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT.

3. TO MAKE IT CLEAR, HOWEVER, THE ABOVE FINDING DOES NOT MEAN THAT THE APPLICATION IS NOW SUCCESSFUL, AND A VOTE CAN BE ORDERED. THERE REMAINS TO BE DEALT WITH BY THE BOARD FURTHER EXAMINATIONS DEALING WITH THE EMPLOYMENT STATUS OF FOURTEEN PERSONS AND AS WELL, THE BOARD HAS NOT YET INQUIRED INTO THE

PETITION IN SUPPORT OF THE APPLICATION OR HEARD EVIDENCE RELATING TO THE CHARGES FILED BY THE RESPONDENT IN THAT REGARD. FOLLOWING THE DETERMINATION OF THE BOARD OF THE STATUS OF THOSE FOURTEEN PERSONS, THE BOARD INTENDS TO CONDUCT FURTHER HEARINGS FOR THE PURPOSE OF ENTERTAINING THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES ON THE MERITS OF THE APPLICATION.

4. THE RESPONDENT'S SUBMISSION WITH RESPECT TO THE TIMELINESS OF THE APPLICATION IS BASICALLY THAT THE COMPANY DID NOT CONDUCT BARGAINING IN GOOD FAITH WITH IT IN ORDER TO ARRIVE AT A COLLECTIVE AGREEMENT, AND THEREFORE IN THE EXERCISE OF THE BOARD'S DISCRETION THE BOARD SHOULD NOT ENTERTAIN THE APPLICATION UNTIL THE UNION HAS HAD AN OPPORTUNITY TO ENTER INTO MEANINGFUL NEGOTIATIONS WITH THE COMPANY. THE RESPONDENT THEREFORE SUBMITS THAT THE APPLICATION SHOULD BE DISMISSED, OR IN THE ALTERNATIVE A DETERMINATION OF THE ISSUE SHOULD BE DEFERRED UNTIL SUCH EVENTS HAVE OCCURRED. THE BOARD, AT THE HEARING, DIRECTED COUNSEL FOR THE RESPONDENT TO ARGUE THIS SUBMISSION, ASSUMING THE EVIDENCE WHICH WAS ALLEGED TO BE RELEVANT TO THAT ISSUE WAS BEFORE THE BOARD AND IN THE EVENT THE BOARD DECIDED THERE WAS MERIT IN THIS OBJECTION THEN IT WOULD HEAR SUCH EVIDENCE AS THE PARTIES MIGHT WISH TO ADDUCE AT A LATER TIME.

5. WHILE WE RECOGNIZE THAT THERE IS A DUTY TO BARGAIN EXPRESSED IN THE ACT, THERE ARE REMEDIES AVAILABLE TO PARTIES IF THERE HAS BEEN A FAILURE TO BARGAIN IN GOOD FAITH. IN THE PRESENT MATTER BARGAINING HAS TAKEN PLACE BETWEEN THE RESPONDENT AND THE INTERVENER, HOWEVER, AN AGREEMENT WAS NOT REACHED AND THE EMPLOYEES HAVE EXERCISED THEIR RIGHTS UNDER THE ACT TO ENGAGE IN A LAWFUL STRIKE PRIOR TO THIS APPLICATION BEING MADE. WHILE THE BARGAINING WAS BETWEEN THE COMPANY AND THE UNION AND AFFECTED THE EMPLOYEES, IT CAN HARDLY BE MAINTAINED THAT ANYTHING THE EMPLOYEES DID OR DID NOT DO CONTRIBUTED TO THE CIRCUMSTANCES WHICH CONSTITUTE THE ALLEGATIONS OF THE UNION AGAINST THE COMPANY. WHY THEN SHOULD THE EMPLOYEES, WHO OTHERWISE WOULD HAVE AN UNFETTERED RIGHT WITHIN THE TIME LIMITS SET OUT IN THE ACT TO BRING AN APPLICATION UNDER SECTION 43, BE PREVENTED FROM DOING SO BECAUSE OF ACTIONS, IMPROPER OR OTHERWISE, OF THE UNION OR THE COMPANY? THE BOARD'S JURISDICTION, ONCE THE APPLICATION HAS BEEN PROPERLY MADE, IS TO DETERMINE THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND WHETHER FIFTY PER CENT OF THOSE EMPLOYEES HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION. IF THE BOARD IS SATISFIED ON THOSE MATTERS, THEN IT MUST ORDER THAT A REPRESENTATION VOTE BE TAKEN. WE FAIL TO SEE THAT THERE IS A DISCRETION GIVEN TO THE BOARD IN THIS SECTION OF THE ACT TO POSTPONE AN APPLICATION OR DISMISS IT FOR REASONS OTHER THAN THOSE WHICH WOULD FALL SQUARELY WITHIN ITS DETERMINATION OF THE PREREQUISITES SET OUT IN THAT SECTION FOR A VOTE TO BE HELD.

6. IT MUST BE CONSIDERED THAT THE UNION WAS CERTIFIED IN 1967, THAT A STRIKE TOOK PLACE IN THE SPRING OF 1968 AND THAT THIS APPLICATION WAS MADE ON DECEMBER 3RD 1968. THE PARTIES HAVE HAD CONSIDERABLY MORE TIME IN WHICH TO BARGAIN THAN THE MINIMUM REQUIREMENTS OF THE ACT AND INDEED, WILL NO DOUBT HAVE HAD ANOTHER YEAR SINCE THE DATE OF THIS APPLICATION BEFORE IT IS FINALLY DETERMINED. THE MAKING OF AN APPLICATION UNDER SECTION 43 DOES NOT FORECLOSE THE PARTIES FROM BARGAINING. THIS, HOWEVER, IS AN APPLICATION BY EMPLOYEES AND UNDER THE ACT IT MUST BE DEALT WITH ON ITS MERITS AND ACCORDINGLY WE ARE OF THE VIEW THAT WHETHER THE UNION OR THE COMPANY ACTED CONTRARY TO THE ACT WOULD NOT PRECLUDE THE EMPLOYEES FROM PROCEEDING IN THE USUAL COURSE WITH THEIR APPLICATION.

7. FOR THE REASONS GIVEN ABOVE, WE ARE NOT PERSUADED THAT THE RESPONDENT HAS MADE OUT A CASE FOR DISMISSAL OR POSTPONEMENT OF THIS APPLICATION, AND IN THIS DETERMINATION, WE HAVE CONSIDERED THAT ALL THE FACTS ALLEGED COULD BE SUPPORTED BY EVIDENCE. CONSEQUENTLY, WE FIND THAT THE RESPONDENT'S PRELIMINARY OBJECTION TO THE TIMELINESS OF THIS APPLICATION IS WITHOUT MERIT AND ITS OBJECTION IS DISMISSED.

INDEXED ENDORSEMENT - RECONSIDERATION OF THE BOARD'S DECISION -

PROSECUTION

16647-69-U: KILMER VAN NOSTRAND CO. LIMITED (APPLICANT) V. T. LEES AND TEAMSTERS' LOCAL UNION 230, READY MIX BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (RESPONDENTS).

DECISION OF THE BOARD: SEPTEMBER 4, 1969.

THIS APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENTS, ALONG WITH SEVEN OTHER APPLICATIONS AGAINST THE SAME RESPONDENTS, WAS FILED JUST PRIOR TO THE CLOSING OF THE BOARD'S OFFICES ON FRIDAY, AUGUST 29TH. THE APPLICATIONS, ACCORDINGLY, COULD NOT BE PROCESSED UNTIL TUESDAY, SEPTEMBER 2ND, MONDAY BEING A HOLIDAY. THE DATE SET FOR FILING REPLIES WAS SEPTEMBER 10TH, 1969 AND HEARINGS WERE SCHEDULED FOR MONDAY SEPTEMBER 15TH. THE DATES FIXED WERE IN ACCORDANCE WITH THE BOARD'S WELL-KNOWN PRACTICE IN DEALING WITH CONSENT TO PROSECUTE APPLICATIONS. ALL PARTIES RECEIVED NOTICES OF THE APPLICATIONS AND/OR NOTICES OF HEARING ON WEDNESDAY, SEPTEMBER 3RD.

LATE IN THE MORNING OF SEPTEMBER 3RD THE SOLICITORS FOR THE VARIOUS APPLICANTS FILED A LETTER WITH THE BOARD REQUESTING THAT THE HEARING DATE BE ADVANCED. NO REQUEST FOR AN EXPEDITED HEARING ACCOMPANIED THE APPLICATIONS. THIS REQUEST WAS CONSIDERED BY THE BOARD AT THE VERY FIRST OPPORTUNITY, NAMELY, WEDNESDAY AFTERNOON.

IT IS THE CONSIDERED OPINION OF THE BOARD THAT IN THE CIRCUMSTANCES OUTLINED ABOVE THE RESPONDENTS WOULD HAVE TO BE GIVEN AN OPPORTUNITY TO MAKE REPRESENTATIONS REGARDING THE REQUEST. THE TIME INVOLVED IN SECURING THESE REPRESENTATIONS TOGETHER WITH THE TIME IT WOULD TAKE TO RE-PROCESS THE APPLICATIONS (ASSUMING THE REQUEST WAS GRANTED) WOULD MAKE IT VIRTUALLY IMPOSSIBLE TO ADVANCE THE HEARING TO ANY DATE EARLIER THAN FRIDAY, SEPTEMBER 12TH, AND, IN ALL LIKELIHOOD, NOT EVEN THEN. IN THESE CIRCUMSTANCES, THE REQUEST OF THE APPLICANTS IS DENIED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION -

SECTION 65

15289-68-U: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. MURRAY BROS. LUMBER CO. LTD. (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND A. MAIN.

APPEARANCES AT THE HEARING: J. SACK, J. HORAN FOR THE APPLICANT;
D.F.O. HERSEY, DOWDALL MURRAY FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 19, 1969.

1. SUBSEQUENT TO THE BOARD'S DECISION IN THIS MATTER DATED FEBRUARY 26, 1969 THE RESPONDENT REQUESTED A REVIEW OF THE DECISION CONCERNING THE AGGRIEVED PERSONS FRANCIS LUCKASAVITCH AND TED DOMBROSKIE AND PARTICULARLY THAT IT BE ALLOWED TO INTRODUCE NEW EVIDENCE.

2. THE REGISTRAR WAS DIRECTED TO LIST THIS MATTER FOR HEARING TO SHOW CAUSE WHY THE BOARD SHOULD RECONSIDER ITS DECISION OF FEBRUARY 26TH 1969.

3. AT THE HEARING THE BOARD WAS ADVISED THAT THE PARTIES HAD REACHED AN AGREEMENT WITH RESPECT TO FRANCIS LUCKASAVITCH AND ACCORDINGLY, IT WILL NOT BE NECESSARY TO CONSIDER THE REQUEST IN THIS CASE.

4. THE BOARD THEN HEARD ARGUMENT WITH RESPECT TO MR. TED DOMBROSKIE. AT THE ORIGINAL HEARING, MR. DOMBROSKIE HAD GIVEN EVIDENCE THAT SUBSEQUENT TO HIS DISCHARGE HE WAS HOSPITALIZED FOR A BACK PROBLEM. HE WAS BOTH EXAMINED AND CROSS-EXAMINED IN THAT REGARD AND THAT MATTER WAS CONSIDERED BY THE BOARD IN ARRIVING AT THE AMOUNT OF COMPENSATION TO BE AWARDED. THE RESPONDENT NOW SUBMITS THAT THERE MAY BE EVIDENCE AVAILABLE INDICATING THAT MR. DOMBROSKIE WOULD NOT HAVE BEEN ABLE TO WORK AT ALL AND THEREFORE HE SHOULD NOT HAVE RECEIVED ANY COMPENSATION.

5. IN THIS CASE THE FIRST DAY OF HEARING WAS ON DECEMBER 20TH, 1968. MR. DOMBROSKIE TESTIFIED; HE WAS EXAMINED AND CROSS-EXAMINED ON THAT DATE AND THIS COMPLETED HIS TESTIMONY. THE HEARING THEN ADJOURNED UNTIL JANUARY 29TH 1969 TO ALLOW THE RESPONDENT TO COMPLETE ITS DEFENCE. THE RESPONDENT, HAVING CROSS-EXAMINED MR. DOMBROSKIE AT THE ORIGINAL HEARING HAD THE PERIOD FROM DECEMBER 20TH, 1968 TO JANUARY 29TH, 1969 TO OBTAIN ANY EVIDENCE THAT IT DEEMED NECESSARY TO REBUTT MR. DOMBROSKIE'S EVIDENCE.

6. WE ARE NOT SATISFIED THAT THE EVIDENCE WHICH THE RESPONDENT NOW SEEKS TO ADDUCE COULD NOT HAVE BEEN OBTAINED WITH REASONABLE DILIGENCE EITHER PRIOR TO DECEMBER 20TH, 1968 OR AT LEAST PRIOR TO JANUARY 29TH, 1969. SEE LADD V. MARSHALL 19543 ALL E.R. 745 AT 748. WHEN WE CONSIDER THAT FACTOR TOGETHER WITH THE NATURE OF THE ALLEGED NEW EVIDENCE AND ITS DOUBTFUL AVAILABILITY, WE ARE OF THE OPINION THAT THE RESPONDENT HAS NOT SHOWN CAUSE FOR HOLDING ANOTHER HEARING AND ALLOWING THE INTRODUCTION OF FURTHER EVIDENCE.

7. THE REQUEST BY THE RESPONDENT IS THEREFORE DENIED.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

16688-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. PROCON REFINERY AND PETROCHEMICAL CONSTRUCTORS
(CANADA) LIMITED (RESPONDENT).

6. THE APPLICANT HAS REQUESTED THAT ITS REGULAR CONSTRUCTION INDUSTRY BARGAINING UNIT BE WIDENED TO INCLUDE "SURVEY CREWS INCLUDING PARTY CHIEF AND THOSE BELOW THE RANK OF PARTY CHIEF". HAVING GIVEN THIS MATTER CAREFUL CONSIDERATION WE ARE NOT PREPARED, IN THE CIRCUMSTANCES OF THIS CASE, TO ALTER THE WELL-ESTABLISHED CRAFT BARGAINING UNIT NORMALLY GRANTED THIS APPLICANT. IN OUR VIEW EMPLOYEES IN THE SURVEY CREW WOULD CONSTITUTE, IN THEMSELVES, AN APPROPRIATE BARGAINING UNIT UNDER SECTION 6(1) OF THE ACT.

. . .

10. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN SURVEY WORK, SAVE AND EXCEPT PARTY CHIEF AND THOSE ABOVE THE RANK OF PARTY CHIEF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(SEPTEMBER 26, 1969).

STATISTICAL TABLES FOR FIRST 6 MONTHS (APRIL - SEPTEMBER) FISCAL YEAR 1969-70

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	2ND 3 MONTHS FISCAL YEAR 1969-70	1ST 6 MONTHS FISCAL YEAR	
		1969-70	1968-69
I. CERTIFICATION	258	556	521
II. DECLARATION TERMINATING BARGAINING RIGHTS	8	24	28
III. DECLARATION OF SUCCESSOR STATUS	1	6	9
IV. DECLARATION THAT STRIKE UNLAWFUL	6	28	25
V. DECLARATION THAT LOCK-OUT UNLAWFUL	3	4	3
VI. CONSENT TO PROSECUTE	44	82	55
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	59	98	94
VIII. MISCELLANEOUS	19	41	36
TOTAL	<u>398</u>	<u>839</u>	<u>771</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	2ND 3 MONTHS FISCAL YEAR 1969-70	1ST 6 MONTHS FISCAL YEAR	
		1969-70	1968-69
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	297	629	532

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	2ND 3 MONTHS	1ST 6 MONTHS FISCAL YEAR	
	FISCAL YEAR 1969-70	1969-70	1968-69
I. CERTIFICATION	270	545	531
II. DECLARATION TERMINATING BARGAINING RIGHTS	12	25	25
III. DECLARATION OF SUCCESSOR STATUS	2	19	13
IV. DECLARATION THAT STRIKE UNLAWFUL	4	24	21
V. DECLARATION THAT LOCK-OUT UNLAWFUL	3	4	3
VI. CONSENT TO PROSECUTE	31	71	51
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	49	93	106
VIII. MISCELLANEOUS	<u>24</u>	<u>57</u>	<u>30</u>
TOTAL	<u>395</u>	<u>838</u>	<u>780</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
2ND 3 MTHS FISCAL YEAR	1ST 6 MTHS F.Y.		2ND 3 MTHS FISCAL YEAR	1ST 6 MTHS F.Y.	
1969-70	1969-70	1968-69	1969-70	1969-70	1968-69

I. CERTIFICATION

GRANTED	190	375	360	4824	13011	11710
DISMISSED	47	104	126	2012	3922	3885
WITHDRAWN	<u>33</u>	<u>66</u>	<u>45</u>	<u>326</u>	<u>891</u>	<u>753</u>
TOTAL	<u>270</u>	<u>545</u>	<u>531</u>	<u>7162</u>	<u>17824</u>	<u>16348</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	6	12	13	57	388	311
DISMISSED	6	13	9	35	141	126
WITHDRAWN	<u>0</u>	<u>-</u>	<u>3</u>	<u>-</u>	<u>18</u>	<u>58</u>
TOTAL	<u>12</u>	<u>25</u>	<u>25</u>	<u>92</u>	<u>547</u>	<u>495</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>2ND 3 MONTHS</u>		<u>1ST 6 MTHS FISCAL YEAR</u>	
		<u>FISCAL YEAR</u>			
		<u>1969-70</u>		<u>1969-70</u>	<u>1968-69</u>
III.	<u>DECLARATION THAT STRIKE</u>				
	<u>UNLAWFUL</u>				
	GRANTED	-		1	1
	DISMISSED	2		7	2
	WITHDRAWN	2		16	18
	TOTAL	<u>4</u>		<u>24</u>	<u>21</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>				
	<u>UNLAWFUL</u>				
	GRANTED	1		1	-
	DISMISSED	2		2	1
	WITHDRAWN	-		1	2
	TOTAL	<u>3</u>		<u>4</u>	<u>3</u>
V.	<u>CONSENT TO PROSECUTE</u>				
	GRANTED	18		33	9
	DISMISSED	2		6	9
	WITHDRAWN	11		32	33
	TOTAL	<u>31</u>		<u>71</u>	<u>51</u>
VI.	<u>COMPLAINT OF UNFAIR</u>				
	<u>PRACTICE IN EMPLOYMENT</u>				
	<u>(SECTION 65)</u>				
	GRANTED	5		13	5
	DISMISSED	13		20	25
	WITHDRAWN	31		60	76
	TOTAL	<u>49</u>		<u>93</u>	<u>106</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF

BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND 3 MONTHS	1ST 6 MTHS FISCAL YEAR	
	FISCAL YEAR 1969-70	1969-70	1968-69
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	4	14	9
POST-HEARING VOTE	6	10	18
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	2	5	2
POST-HEARING VOTE	14	27	17
BALLOTS NOT COUNTED	<u>1</u>	<u>1</u>	<u>1</u>
TOTAL	<u>27</u>	<u>57</u>	<u>47</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	2ND 3 MONTHS	1ST 6 MTHS FISCAL YEAR	
	FISCAL YEAR 1969-70	1969-70	1968-69
*RESPONDENT UNION SUCCESSFUL	2	2	-
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>6</u>	<u>8</u>
TOTAL	<u>5</u>	<u>8</u>	<u>8</u>

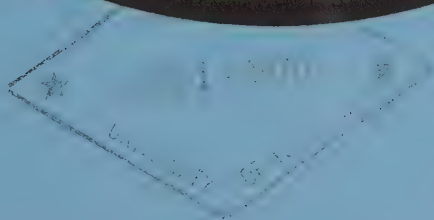
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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NO VOTE CONDUCTED

15888-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SUNAR INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO EACH OF THE FOLLOWING - GENERAL MANAGER, PERSONNEL MANAGER, SECRETARY TO THE CORPORATE SECRETARY, COMPTROLLER - PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SALESMEN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, AND STUDENTS HIRED ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY." (56 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND SUBJECT TO THE BOARD'S DECISION DATED AUGUST 28, 1969).

(SEE INDEXED ENDORSEMENT PAGE 838).

16293-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT SAULT ST. MARIE, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER."

16308-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. LAKEFIELD COLLEGE SCHOOL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS AT LAKEFIELD COLLEGE SCHOOL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TEACHERS, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16357-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. N. WEINGARTEN, ESQ. CARRYING ON BUSINESS UNDER THE CORRECT NAME OF SHOPPERS DRUG MART (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FLORR MANAGER, PERSONS ABOVE THE RANK OF FLOOR MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT BY THE PARTIES).

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STUDENTS HIRED AND EMPLOYED DURING THE SCHOOL VACATION PERIOD ARE EXCLUDED FROM THE BARGAINING UNIT AND THAT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 849).

16532-69-R: NURSES' ASSOCIATION NORTH BAY CIVIC HOSPITAL (APPLICANT) V. NORTH BAY HOSPITAL COMMISSION OPERATING THE NORTH BAY CIVIC HOSPITAL (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, OFFICE AND CLERICAL STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (59 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT ASSISTANT HEAD NURSES AND PERSONS ABOVE THE RANK OF ASSISTANT HEAD NURSE." (20 EMPLOYEES IN THE UNIT).

16562-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF NEPEAN (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT TOWNSHIP CLERK, DEPUTY CLERK, COMMISSIONER OF FINANCE, TOWNSHIP ENGINEER, EXECUTIVE ADMINISTRATOR, PLANNING DIRECTOR, BUILDING INSPECTOR, SECRETARY TO THE CLERK AND SECRETARY TO THE COMMISSIONER OF FINANCE AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CORPORATION OF THE TOWNSHIP OF NEPEAN AND CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 1021." (32 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16569-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. BERMAC BURNER SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 850).

16630-69-R: LOCAL UNION 221, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. TOSHACK BROTHERS (PRESCOTT) LTD., (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PLUMBERS, PLUMBERS' APPRENTICES, STEAMFITTERS AND STEAM-FITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURGH IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(AFTER CONSIDERING ALL THE EVIDENCE BEFORE THE BOARD, INCLUDING THE REPORT OF THE EXAMINER DATED SEPTEMBER 16TH, 1969, AND THE REPRESENTATIONS OF THE PARTIES ON THE REPORT OF THE EXAMINER).

16665-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS STORES AT LONDON, SAVE AND EXCEPT MEAT DEPARTMENT HEADS, PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING OFF SCHOOL HOURS AND THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND THE DECISION OF THE BOARD DATED SEPTEMBER 25, 1969 IN THE APPLICATION BY THE APPLICANT WITH RESPECT TO THE RESPONDENT'S EMPLOYEES AT ITS DUNNVILLE STORES, BOARD FILE 16128-69-R).

16679-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. LAKESHORE FUELS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (2 EMPLOYEES IN THE UNIT).

16688-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PROCON REFINERY AND PETROCHEMICAL CONSTRUCTORS (CANADA) LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN SURVEY WORK, SAVE AND EXCEPT PARTY CHIEF AND THOSE ABOVE THE RANK OF PARTY CHIEF." (2 EMPLOYEES IN THE UNIT).

(DISMISSED).

16690-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE BOARD OF GOVERNORS OF THE PETERBOROUGH CIVIC HOSPITAL (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

UNIT: "ALL TECHNOLOGISTS AND TECHNICIANS IN THE EMPLOY OF THE RESPONDENT IN THE DEPARTMENT OF PATHOLOGY, SAVE AND EXCEPT CHIEF LABORATORY TECHNOLOGIST AND PERSONS ABOVE THE RANK OF CHIEF LABORATORY TECHNOLOGIST, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENT TECHNICIANS IN THE SCHOOL OF MEDICAL TECHNOLOGY, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS BOUND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #19, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #796." (22 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 859).

16706-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. WHEATIN GLASS COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (44 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 861).

16707-69-R: NIAGARA PENINSULA PRINTING PRESSMEN AND ASSISTANTS' UNION No. 425, SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. REWBURY PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

16709-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. NORTHERN AND CENTRAL GAS CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT KIRKLAND LAKE, SAVE AND EXCEPT OFFICE SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

16710-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. NORTHERN AND CENTRAL GAS CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KIRKLAND LAKE, ANSONVILLE AND THE TOWN OF COCHRANE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

16714-69-R: SERVICE EMPLOYEES' UNION, LOCAL 210 AFFILIATED WITH SERVICE EMPLOYEES' INTERNATIONAL UNION AFL-CIO-CLC (APPLICANT) V. LAMBTON COUNTY TWILIGHT HAVEN (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS TWILIGHT HAVEN HOME IN PETROLIA, SAVE AND EXCEPT HOUSEKEEPER, ADJUVANT, CRAFT INSTRUCTOR, CHIEF CHEF, CHIEF ENGINEER, PURCHASING AGENT, STOCKKEEPER, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (55 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16715-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WHITAKER CABLE OF GUELPH LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT DAWSON ROAD IN GUELPH, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SPECIAL CIRCUMSTANCES IN THIS MATTER OUTLINED BY THE COUNSEL FOR THE RESPONDENT AT THE HEARING).

16716-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WALTER M. LONEY COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF OTTAWA, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

16717-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SCOTT'S BOX LUNCH LTD. (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND OFFICE STAFF." (52 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THAT PERSON CLASSIFIED AS THE RELAY DRIVER IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE).

16718-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. NOR-SHORE READY MIX CONCRETE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS EMPLOYED BY THE RESPONDENT IN WELLS TOWNSHIP IN THE DISTRICT OF ALGOMA." (6 EMPLOYEES IN THE UNIT).

16720-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. KENT - CHATHAM BOARD OF HEALTH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF CHATHAM OR IN THE COUNTY OF KENT, SAVE AND EXCEPT REGISTERED AND GRADUATE NURSES, CHIEF INSPECTOR, PERSONS ABOVE THE RANK OF CHIEF INSPECTOR, AND OFFICE MANAGER." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16721-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL TEACHERS OF THE RESPONDENT AT ITS ONTARIO MANPOWER TRAINING CENTRES IN THE COUNTY OF MIDDLESEX, SAVE AND EXCEPT ASSISTANT CO-ORDINATORS, PERSONS ABOVE THE RANK OF ASSISTANT CO-ORDINATOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (10 EMPLOYEES IN THE UNIT).

16726-69-R: THE AMALGAMATED JEWELRY WORKERS' UNION, LOCAL 33, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. PRE-MET MANUFACTURERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, WHO ARE ENGAGED IN THE PRODUCTION OF ARTICLES OF JEWELLERY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SHIPPERS AND DELIVERY PERSONNEL." (30 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 862).

16728-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE PERTH COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL CAFETERIA PERSONNEL DIRECTLY EMPLOYED BY THE PERTH COUNTY BOARD OF EDUCATION, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16731-69-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. A. E. LEPAGE LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT 7 OVERLEA BOULEVARD, TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE AND TO THE REPRESENTATIONS OF COUNSEL FOR BOTH PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT 15 OVERLEA BOULEVARD, TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT).

16733-69-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. DAYTON RUBBER COMPANY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (103 EMPLOYEES IN THE UNIT).

16734-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. VIBRAPIPE CONCRETE PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF OSGOODE, SAVE AND EXCEPT OFFICE AND SALES STAFF, FOREMEN AND THOSE ABOVE THE RANK OF FOREMAN, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, ON BEHALF OF LOCAL 15350." (22 EMPLOYEES IN THE UNIT).

16736-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V. TOWNSEND TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FERGUS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

16739-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. SPACE - PAK INTERNATIONAL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HURON PARK IN THE COUNTY OF HURON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

16741-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. CHARLES ALBERT SMITH COMPANY, DIVISION OF BATE CHEMICAL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO CORRESPONDENCE RECEIVED FROM THE INTERNATIONAL CHEMICAL WORKERS UNION THE BOARD DECLARES THAT THE INTERNATIONAL CHEMICAL WORKERS UNION HAS ABANDONED ANY BARGAINING RIGHTS THAT IT MAY HOLD WITH RESPECT TO THE EMPLOYEES IN THE BARGAINING UNIT ABOVE DESCRIBED WHICH IT OBTAINED PURSUANT TO CERTIFICATE 13082-67-R.).

16742-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. CAMSCO SOLVENTS DIVISION, BATE CHEMICAL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

16743-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. DUPLATE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAWKESBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SECURITY GUARDS, QUALITY CONTROL TECHNICIANS, AND OFFICE AND SALES STAFF." (137 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16744-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CASEY JONES ELECTRICAL (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND ELECTRICIANS' HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

16745-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. B & D CONCRETE PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

16751-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CON-ENG CONTRACTORS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16752-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. DURIE FUELS LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24

HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND FUEL OIL TRUCK DRIVERS WHO ARE NOT ENGAGED IN SERVICING OF OIL BURNERS." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

16756-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. EASTERN CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16760-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SANDERCOCK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON AND ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

16761-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SANDERCOCK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT AND ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSE OF CLARITY THE BOARD NOTES THAT THOSE EMPLOYEES "PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME" REFERS TO EMPLOYEES ENGAGED IN FIELD MAINTAINANCE AND REPAIRS AND DOES NOT INCLUDE SHOP OR YARD EMPLOYEES).

16764-69-R: LITHOGRAPHERS & PHOTOENGRAVERS INTERNATIONAL UNION, LONDON LOCAL 247 (APPLICANT) V. MIRROR PRESS LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS EMPLOYED BY THE RESPONDENT AT STRATFORD, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

16776-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LEDCO LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (54 EMPLOYEES IN THE UNIT).

16778-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CAPE INSTALLATIONS LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

16779-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. ONTARIO BAKERY (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN IN THE EMPLOY OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16781-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 1059 (APPLICANT) V. CONSOLIDATED BUILDING MAINTENANCE COMPANY (DIVISION OF CONSOLIDATED MAINTENANCE SERVICES LIMITED) (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE FORD ASSEMBLY PLANT AT TALBOTVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT THE FORD ASSEMBLY PLANT AT TALBOTVILLE." (4 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE CRUMLIN AIRPORT BUILDINGS AT LONDON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

(DISMISSED).

16789-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MOYER CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16790-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BEAMSVILLE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND BRICK-LAYERS' APPRENTICES IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16793-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) V. FORT CONSTRUCTION & EQUIPMENT LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS, AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16795-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JEAN DE BREBEUF HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STURGEON FALLS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #1101, C.L.C.." (40 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS).

16805-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1071 (APPLICANT) V. INTERNORTH CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16820-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ELRIC CONTRACTORS WALLACEBURG LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16821-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. MONTREAL IRON WORKS CORP. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16827-69-R: SPECIALIZED PARCEL DELIVERY AND HANDLERS UNION (APPLICANT) V. W. J. MOWAT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

16829-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. ROY HAGERMAN CARRYING ON BUSINESS AS AN AUTHORIZED ESSO COMMERCIAL SERVICE DEALER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (4 EMPLOYEES IN THE UNIT).

16834-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 247 (APPLICANT) v. EASTWOOD CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16835-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 772 (APPLICANT) v. CATALYTIC CONSTRUCTION COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM BY THE RESPONDENT AT THE AMHERSTBURG PLANT OF PEACE RIVER MINING AND SMELTING, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 864).

16839-69-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C., LOCAL 197 (APPLICANT) v. BRANT HOTEL (BRANTFORD) LIMITED, OPERATING HANRAHAN TAVERN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HANRAHAN TAVERN IN HAMILTON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

16841-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT DUNDAS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

16843-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. DON ACKISON ELECTRIC (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16844-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PIETRO ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND ELECTRICIANS' HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16855-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE CONSTRUCTION PRODUCTS DIVISION OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

16858-69-R: SERVICE EMPLOYEES' UNION, LOCAL 210 AFFILIATED WITH SERVICE EMPLOYEES' INTERNATIONAL UNION AFL-CIO-CLC (APPLICANT) V. ELMER B. WALKER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINGHAM, ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

16860-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. GIBSON OIL BURNER SERVICE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS." (5 EMPLOYEES IN THE UNIT).

16863-69-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. NEW WORLD GRAPHICS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT OWNER-MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

16867-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CAPE INSTALLATIONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16868-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. DIAMOND GLASS & MIRROR COMPANY (RESPONDENT).

UNIT: "ALL GLAZIERS AND GLAZIERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

16003-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HALTON COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (99 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	74
NUMBER OF PERSONS WHO CAST BALLOTS	74
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	58
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	16

16301-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. IRVINE AND FRANCIS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

16302-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. IRVINE AND FRANCIS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

(CONSOLIDATED APPLICATIONS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS I.G.A. FOODLINER STORES AT SMITHS FALLS, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS I.G.A. FOODLINER STORES AT SMITHS FALLS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, AND PERSONS COVERED BY BARGAINING UNIT #1." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	5

16459-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES EMPLOYED AT THE MOTOR TRUCK BRANCH OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	12
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

16460-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (INTERVENER).

16468-69-R: THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

(CONSOLIDATED APPLICATIONS)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (146 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	126
NUMBER OF PERSONS WHO CAST BALLOTS	126
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, CANADIAN UNION OF PUBLIC EMPLOYEES	76
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION	50

(CANADIAN UNION OF PUBLIC EMPLOYEES CERTIFIED)

(APPLICATION OF THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION DISMISSED).

16516-69-R: NURSES' ASSOCIATION ST. MARY'S GENERAL HOSPITAL (APPLICANT) V. ST. MARY'S GENERAL HOSPITAL (RESPONDENT).

UNIT#1: "ALL LAY, REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT KITCHENER ENGAGED IN NURSING CARE AND TEACHING, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (96 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

UNIT #2: "ALL LAY, REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT KITCHENER ENGAGED IN NURSING CARE AND TEACHING, EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (109 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	39
NUMBER OF PERSONS WHO CAST BALLOTS	30

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

16192-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MILNES FUEL OIL LTD. (RESPONDENT) V. FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 352 (INTERVENER). (NO EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 847).

16580-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. MICRODENT LABORATORIES LTD. (RESPONDENT). (18 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 852).

16673-69-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. PAXTON TRANSPORT LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (18 EMPLOYEES).

16685-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267 (APPLICANT) V. ALBERTA FUEL LIMITED (RESPONDENT). (1 EMPLOYEE).

16725-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 498 (APPLICANT) V. MCLEAN-FOSTER CONSTRUCTION LIMITED (RESPONDENT). (9 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

16553-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. CANADIAN INDUSTRIES LIMITED (PAINTS DIVISION) (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN ITS POWER HOUSE AT ITS YORK WORKS IN METROPOLITAN TORONTO SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS		4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	3	

16626-69-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO
(APPLICANT) V. HARDING CARPETS LIMITED (RESPONDENT) V. CANADIAN
TEXTILE AND CHEMICAL UNION (FORMERLY CANADIAN TEXTILE COUNCIL)
(INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD,
SAVE AND EXCEPT FIXER ASSISTANT FOREMEN, PERSONS ABOVE THAT RANK,
OFFICE STAFF AND OPERATING ENGINEERS." (212 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		190
NUMBER OF PERSONS WHO CAST BALLOTS	186	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	91	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	93	

16723-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V.
PEARCE WAREHOUSING LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE
AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN
24 HOURS PER WEEK." (4 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2	

16724-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V.
PEARCE CARTAGE (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE
AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (3 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3	

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

16257-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BRANTOX HOLDINGS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF BURGESSVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		14
NUMBER OF PERSONS WHO CAST BALLOTS	14	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

16408-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED (RESPONDENT) V. TORONTO TYPOGRAPHICAL UNION, No. 91 (INTERVENER #1) V. CANADIAN BUSINESS MACHINE WORKERS UNION (INTERVENER #2).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT 222 LANSDOWNE AVENUE TORONTO, ONTARIO AND 15 MARMAC DRIVE, REXDALE, ONTARIO, SAVE AND EXCEPT MAIN OFFICE, SALARIED, SALES AND SERVICE EMPLOYEES, CAFETERIA STAFF, PLANT GUARDS, PART-TIME EMPLOYEES, FOREMEN, SUPERVISORS AND ALL EMPLOYEES WHO HAVE POWER TO DISCIPLINE EMPLOYEES ON BEHALF OF THE COMPANY." (468 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		434
NUMBER OF PERSONS WHO CAST BALLOTS	434	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	194	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2 CANADIAN BUSINESS MACHINE WORKERS UNION	239	

16560-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. FROST STEEL & WIRE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE INSTALLATION AND/OR ERECTION OF FENCES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (65 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
REVISED LIST		41
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	21	

16590-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. LIQUID CARBONIC CANADIAN CORPORATION LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT DEPOT-SUPERVISOR, PERSONS ABOVE THE RANK OF DEPOT SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

16592-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CRICH HOLDINGS & BUILDINGS LIMITED (RESPONDENT). (6 EMPLOYEES).

16738-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. FERSU HOTEL LIMITED, TRADING AS ROYAL HOTEL (RESPONDENT). (16 EMPLOYEES).

16753-69-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. MARGARET'S FINE FOODS LIMITED (RESPONDENT). (69 EMPLOYEES).

16762-69-R: T.E.L. COUNCIL OF UNIONS (APPLICANT) V. STANDARD PAVING & MATERIALS LIMITED (RESPONDENT). (10 EMPLOYEES).

16772-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. BERTRAND & FRERES (RESPONDENT). (20 EMPLOYEES).

16780-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. NORSHORE READY MIX (RESPONDENT). (1 EMPLOYEE).

16782-69-R: THE OTTAWA NEWSPAPER GUILD LOCAL 205 OF THE AMERICAN NEWSPAPER GUILD AFL-CIO-CLC (APPLICANT) V. BUSHNELL COMMUNICATIONS LTD. CJOH-TV, OTTAWA, ONTARIO (RESPONDENT). (9 EMPLOYEES).

16783-69-R: THE OTTAWA NEWSPAPER GUILD LOCAL 205, AMERICAN NEWSPAPER GUILD AFL-CIO-CLC (APPLICANT) V. BUSHNELL COMMUNICATIONS LTD. CJOH-TV, OTTAWA (RESPONDENT). (7 EMPLOYEES).

16806-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. KEYSTONE CONTRACTORS LIMITED (RESPONDENT). (12 EMPLOYEES).

16822-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 205 CHURCH ST., TORONTO 2, ONTARIO (APPLICANT) V. ELLIS-DON LIMITED (RESPONDENT). (2 EMPLOYEES).

16836-69-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 172 (APPLICANT) V. RESTORATION ASSOCIATES (RESPONDENT). (4 EMPLOYEES).

16848-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE WATERLOO COUNTY HIGH SCHOOL BOARD (RESPONDENT). (69 EMPLOYEES).

16870-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. I. B. L. INDUSTRIES LIMITED (RESPONDENT). (125 EMPLOYEES).

16871-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. INTRUSION PREPAKT LTD. (RESPONDENT). (16 EMPLOYEES).

16890-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL 397, WHITBY & OSHAWA, ONTARIO (APPLICANT) V. J. H. VERNON EXCAVATING (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING OCTOBER

16461-69-R: GEORGE ROSEBUSH (APPLICANT) V. UNITED PAPERMAKERS AND
PAPERWORKERS, SPRUCE FALLS FOREMAN'S LOCAL 523 (RESPONDENT). (GRANTED).

(RE: SPRUCE FALLS POWER AND PAPER COMPANY LIMITED
AND KIMBERLY-CLARK OF CANADA LIMITED).

UNIT: "ALL SALARIED FOREMEN EMPLOYED BY SPRUCE FALLS POWER AND
PAPER COMPANY LIMITED AND KIMBERLY-CLARK OF CANADA LIMITED DIRECTLY
CONNECTED WITH THE MILL AT KAPUSKASING." (44 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		44
NUMBER OF PERSONS WHO CAST BALLOTS		44
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	43	

16504-69-R: JEAN SUDYK OF THE TOWN OF GODERICH, IN THE COUNTY OF
HURON, AND OTHERS (APPLICANT) V. BUILDING SERVICE EMPLOYEES UNION
(RESPONDENT). (GRANTED).

(RE: MAITLAND MANOR LIMITED).

UNIT: "ALL EMPLOYEES OF MAITLAND MANOR LIMITED AT ITS MAITLAND
MANOR IN GODERICH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF,
GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS,
UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE
DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE
RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE
SUMMER VACATIONS." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		14
NUMBER OF PERSONS WHO CAST BALLOTS		14
NUMBER OF BALLOTS MARKED IN FAVOUR OR RESPONDENT	2	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	12	

16826-69-R: REIDS' MARINE LIMITED (APPLICANT) V. LABOURERS INTER-
NATIONAL UNION OF NORTH AMERICA LOCAL 493 (RESPONDENT).
(3 EMPLOYEES). (DISMISSED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

OCTOBER

16584-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADIAN METAL WORKERS ASSOCIATION (RESPONDENT) V. LAKESHORE DIE CASTING LIMITED (EMPLOYER) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

OCTOBER

16814-69-U: NORTHERN ELECTRIC COMPANY LIMITED (APPLICANT) V. CERTAIN EMPLOYEES OF THE APPLICANT NAMED ON ATTACHED LISTS (RESPONDENT). (WITHDRAWN).

16815-69-U: BARTOZZI BROTHERS CONSTRUCTION LIMITED, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF ONTARIO PLASTERING COMPANY (APPLICANT) V. OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (RESPONDENT). (WITHDRAWN).

16816-69-U: SAVIOLI AND MORGAN COMPANY LIMITED CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF INDUSTRIAL LATHING AND PLASTERING COMPANY (APPLICANT) V. OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (RESPONDENT). (WITHDRAWN).

16817-69-U: TORONTO PLASTERING COMPANY LIMITED (APPLICANT) V. OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (RESPONDENT). (WITHDRAWN).

16818-69-U: GIULIANI CONSTRUCTION COMPANY LIMITED (APPLICANT) V. OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (RESPONDENT). (WITHDRAWN).

16819-69-U: ROSELAWN PLASTERING COMPANY LIMITED (APPLICANT) V. OPERATIVE PLASTERERS AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

OCTOBER

16785-69-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BERG MFG (CANADA) LIMITED (RESPONDENT). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

16218-69-U: TORONTO CIVIC EMPLOYEES UNION, LOCAL 43 (APPLICANT) V. THE PARKING AUTHORITY OF TORONTO (RESPONDENT). (WITHDRAWN).

16471-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MIDDLESEX COUNTY BOARD OF EDUCATION AND P. W. TURK (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 874).

16671-69-U: CUSTON CONCRETE LIMITED (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, THOMAS LEES AND JOHN PAYNE (RESPONDENTS). (WITHDRAWN).

16702-69-U: RAPID TYPESETTING COMPANY LIMITED (APPLICANT) V. TORONTO TYPOGRAPHICAL UNION NUMBER 91 (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 875).

16703-69-U: RAPID TYPESETTING COMPANY LIMITED (APPLICANT) V. TERENCE WILDE (RESPONDENT). (DISMISSED).

16704-69-U: RAPID TYPESETTING COMPANY LIMITED (APPLICANT) V. KEN PEATLING (RESPONDENT). (GRANTED).

16711-69-U: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L. C.I.O. C.L.C. (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

16712-69-U: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, A.F.L. C.I.O. C.L.C. (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED, BEATRICE MAXWELL, BARBARA BLANCHARD, ROBERT LOGAN AND WILLARD HAMELIN (RESPONDENTS). (WITHDRAWN).

16713-69-U: HANK BROUWER CONSTRUCTION LIMITED AND THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANTS) V. WALTER T. CROSBIE AND WILFRED HAGUE (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 877).

16758-69-U: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. FLOWERTOWN SHOPPING CENTRE LIMITED AND ALLAN KERBEL (RESPONDENTS).
(WITHDRAWN).

16765-69-U: DURON COMPANY (ONTARIO) LTD. (APPLICANT) V. R.
D'ALESSANDRO AND THE OPERATIVE PLASTERERS' AND CEMENT MASONS'
INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA
(RESPONDENTS). (WITHDRAWN).

16786-69-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BERG MFG.
(CANADA) LTD. (RESPONDENT). (WITHDRAWN).

16787-69-U: DIPLOCK DURABLE FLOOR CO. (APPLICANT) V. BELL CLEARY
AND THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL
ASSOCIATION OF THE UNITED STATES AND CANADA (RESPONDENTS).
(WITHDRAWN).

16813-69-U: NORTHERN ELECTRIC COMPANY LIMITED (APPLICANT) V. CERTAIN
EMPLOYEES OF THE APPLICANT NAMED ON THE ATTACHED LISTS (RESPONDENT).
(WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING OCTOBER

16420-69-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL
UNION 1687 (COMPLAINANT) V. I.M.I. UNDERGROUND CONTRACTORS LIMITED
(RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 882).

16550-69-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V.
THE FALK CORPORATION OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

16583-69-U: COUNCIL OF CONCRETE FORMING TRADE UNIONS (COMPLAINANT)
V. KERBEL DEVELOPMENTS LIMITED (RESPONDENT). (WITHDRAWN).

16594-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16595-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16596-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16597-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16598-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16599-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16600-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16601-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16602-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16603-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16604-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

- AND -

16605-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) v.
ROMAT ORNAMENTAL IRON LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 885).

16627-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. ROCCA
STEEL LIMITED (RESPONDENT). (WITHDRAWN).

16632-69-U: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION,
LOCAL 9-834 (COMPLAINANT) v. ALMA PAINT AND VARNISH COMPANY LIMITED
(RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 890).

16670-69-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND
ALLIED EMPLOYEES AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL
647 (COMPLAINANT) v. BRANTOX HOLDINGS LIMITED (RESPONDENT).
(WITHDRAWN).

16691-69-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL
419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v.
CHARTERS PUBLISHING COMPANY LIMITED (RESPONDENT). (DISMISSED).

16722-69-U: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. LEMBO CORPORATION OF CANADA LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 893).

16737-69-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. DIRECT LUMBER COMPANY LTD. (RESPONDENT). (WITHDRAWN).

16757-69-U: COUNCIL OF CONCRETE FORMING TRADE UNIONS (COMPLAINANT) V. FLOWERTOWN SHOPPING CENTRE LIMITED (RESPONDENT). (WITHDRAWN).

16770-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. WHITAKER CABLE OF CANADA LTD. (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 33(2) DISPOSED OF DURING OCTOBER

16682-69-M: ELECTRICAL CONTRACTORS ASSOCIATION OF TORONTO (APPLICANT) V. LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

16759-69-M: THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO (COMPANY) AND LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 900).

16784-69-M: THE STORK DIAPER SERVICE LTD. (EMPLOYER) AND LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (UNION). (GRANTED).

16864-69-M: THE PARISIAN LAUNDRY CO. OF TORONTO LIMITED (COMPANY) AND LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (UNION). (GRANTED).

16865-69-M: THE PURITAN LAUNDRY COMPANY (COMPANY) AND LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (UNION). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING OCTOBER

15931-68-M: THE ELGIN COUNTY BOARD OF EDUCATION (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES; ST. THOMAS CARETAKERS ASSOCIATION, LOCAL 332; CANADIAN UNION OF PUBLIC EMPLOYEES; ST. THOMAS PUBLIC SCHOOL BOARD (RESPONDENTS). (DISMISSED).

15933-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE MIDDLESEX COUNTY BOARD OF EDUCATION, EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (DISMISSED).

15934-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE MIDDLESEX COUNTY BOARD OF EDUCATION, EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD (RESPONDENTS) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER."

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		38
NUMBER OF PERSONS WHO CAST BALLOTS	35	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	27	

15935-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE MIDDLESEX COUNTY BOARD OF EDUCATION; GLENCOE DISTRICT HIGH SCHOOL BOARD; EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD; STRATHROY DISTRICT COLLEGIATE INSTITUTE (RESPONDENTS). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		69
NUMBER OF PERSONS WHO CAST BALLOTS	65	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	56	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	9	

16325-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. THE COCHRANE-IROQUOIS FALLS BOARD OF EDUCATION (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		28
NUMBER OF PERSONS WHO CAST BALLOTS	27	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	27	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF
DURING OCTOBER

16515-69-M: THE CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT)
V. THE NORTH YORK GENERAL HOSPITAL (RESPONDENT).

16586-69-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V.
CANADIAN FILTERS LIMITED (RESPONDENT). (WITHDRAWN).

16750-69-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1019
(APPLICANT) V. LAMBTON COUNTY SEPARATE SCHOOL BOARD (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

16537-69-M: UNITED STEELWORKERS OF AMERICA (TRADE UNION) AND
POTTER MINES, HARRISON DRILLING AND EXPLORATION CO. LIMITED
(FORMERLY: MUNROE COPPER MINES LIMITED) (EMPLOYER). (DISMISSED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

15832-68-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE
WORKERS (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 907).

INDEXED ENDORSEMENTS

15888-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SUNAR INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: LORNE INGLE, BURRIS ORMSBY, A. PAABOR FOR THE APPLICANT; F. G. HAMILTON, W. H. MORGAN, G. B. SCHNARR FOR THE RESPONDENT; E. R. LEWIS FOR THE GROUP OF EMPLOYEES.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: OCTOBER 28, 1969.

1. IN THIS CASE A GROUP OF EMPLOYEES FILED DOCUMENTS WHICH WERE ALLEGED TO BE STATEMENTS OF DESIRE. THE APPLICANT UNION CHALLENGED THE FILED DOCUMENTS ON THE BASIS THAT THEY DID NOT REPRESENT STATEMENTS OF DESIRE IN OPPOSITION TO THE UNION. IN VIEW OF OUR DECISION IT WILL NOT BE NECESSARY TO DEAL WITH THE ALLEGED CHALLENGE BY THE UNION NOR WITH THE FURTHER CHALLENGE BY THE UNION THAT MANAGEMENT PARTICIPATED IN THE ORIGINATION AND CIRCULATION OF THE STATEMENTS OF DESIRE.

2. IT IS ESSENTIAL, HOWEVER, TO RECITE THE HISTORY OF EVENTS LEADING TO THE BOARD'S DECISION IN THIS MATTER.

3. ON THE TWENTIETH DAY OF MARCH, 1969 THE UNION MADE AN APPLICATION FOR CERTIFICATION. PURSUANT TO THE BOARD'S PRACTICE, FORM 5 WAS POSTED AT THE PREMISES OF THE RESPONDENT COMPANY ON THE TWENTY-FOURTH DAY OF MARCH 1969. THAT FORM PROVIDES INTER ALIA:

"5. ANY EMPLOYEE OR GROUP OF EMPLOYEES AFFECTED BY THE APPLICATION AND DESIRING TO MAKE REPRESENTATIONS TO THE BOARD IN OPPOSITION TO THIS APPLICATION MUST SEND TO THE BOARD A STATEMENT IN WRITING OF SUCH DESIRE, WHICH SHALL,

(A) CONTAIN THE RETURN MAILING ADDRESS OF THE EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES;

(B) CONTAIN THE NAME OF THE EMPLOYER CONCERNED; AND

(C) BE SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES.

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND."

4. THERE WAS THEN FILED WITH THE BOARD THE DOCUMENTS ALLEGED TO BE STATEMENTS OF DESIRE. THE DOCUMENTS WERE FORWARDED TO THE BOARD BY MR. E. LEWIS WHO APPEARED AT THE ORIGINAL HEARING IN THESE CERTIFICATION PROCEEDINGS AS REPRESENTATIVE OF THE GROUP OF EMPLOYEES PURPORTEDLY IN OPPOSITION TO THE APPLICANT UNION. AT THAT HEARING THERE WERE A NUMBER OF ISSUES DISPOSED OF AND MR. LEWIS PARTICIPATED IN THAT HEARING WITH RESPECT TO THOSE ISSUES.

5. IN ADDITION, AT THE FIRST HEARING, COUNSEL FOR THE RESPONDENT COMPANY CHALLENGED THE INCLUSION IN THE BARGAINING UNIT OF VARIOUS PERSONS ON THE BASIS THAT THESE PERSONS EITHER EXERCISED MANAGERIAL FUNCTIONS OR WERE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THE BOARD FOLLOWING ITS USUAL PRACTICE ADJOURNED THE HEARING FOR THE PURPOSE OF APPOINTING AN EXAMINER TO INQUIRE INTO THE MATTERS RAISED BY THE RESPONDENT. THE PARTIES, INCLUDING MR. LEWIS, WERE ADVISED THAT IT WAS NOT THE INTENTION OF THE BOARD AT THAT TIME TO CONDUCT ITS USUAL INQUIRY INTO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. THE PARTIES WERE THEN ADVISED THAT SUCH AN INQUIRY WOULD BE CONDUCTED IF NECESSARY, SUBSEQUENT TO ITS DETERMINATION RESPECTING THOSE PERSONS CHALLENGED BY THE RESPONDENT COMPANY.

6. AT THIS TIME WE WISH TO POINT OUT THAT THE BOARD'S USUAL INQUIRY INTO STATEMENTS OF DESIRE IS CONDUCTED ONLY IF THE STATEMENTS OF DESIRE CAST DOUBT ON THE MEMBERSHIP EVIDENCE FILED BY A UNION, PROVIDED THAT UNION IS IN A POSITION TO BE CERTIFIED.

SINCE STATEMENTS OF DESIRE ARE ONLY CONSIDERED BY THE BOARD IF THE UNION IS IN A POSITION TO BE CERTIFIED AND THE EFFECT OF THE STATEMENTS, IF THEY SATISFY THE BOARD'S REQUIREMENTS, IS TO ORDER A VOTE NO INQUIRY IS MADE IF THE APPLICANT UNION IS IN A VOTE POSITION. ALSO, STATEMENTS OF DESIRE CANNOT REDUCE THE APPLICANT UNION'S MEMBERSHIP POSITION TO LESS THAN THE 45 PER CENT WHICH WOULD NECESSITATE A DISMISSAL OF THE APPLICATION PURSUANT TO SECTION 7(2) OF THE LABOUR RELATIONS ACT. IF THE UNION IS IN A CERTIFIABLE POSITION AND STATEMENTS OF DESIRE ARE FILED, BUT THE STATEMENTS OF DESIRE DO NOT CAST DOUBT ON THE MEMBERSHIP EVIDENCE NO INQUIRY IS MADE, OR TO PUT IT ANOTHER WAY NO INQUIRY IS MADE IF THERE IS NOT SUFFICIENT "OVERLAP" BETWEEN THE STATEMENTS OF DESIRE AND THE UNION MEMBERSHIP EVIDENCE TO CAUSE THE BOARD TO DOUBT THAT THE UNION MEMBERSHIP EXCEEDS 55 PER CENT.

7. THUS AT THE FIRST HEARING THE PARTIES WERE ADVISED THAT THE DECISION WITH RESPECT TO THE COMPANY'S CHALLENGES WOULD AFFECT BOTH THE SIZE OF THE BARGAINING UNIT AND THE UNION'S MEMBERSHIP POSITION, AND THUS NO INQUIRY WOULD BE MADE IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE UNLESS THERE WAS SUFFICIENT OVERLAP

8. AN EXAMINER WAS DULY APPOINTED AND MR. LEWIS ATTENDED THE HEARING OF THE EXAMINER AND, ALTHOUGH INFORMED AS TO THE SUBSEQUENT HEARING WHEREIN THE PARTIES DESIRED TO MAKE REPRESENTATIONS WITH RESPECT TO THE REPORT OF THE EXAMINER, HE DID NOT ATTEND. AS A RESULT OF THE BOARD'S DECISION DATED AUGUST 28TH RESPECTING THE VARIOUS PERSONS CHALLENGED, THE BOARD DETERMINED THAT THERE WAS A SUFFICIENT OVERLAP AND A FURTHER HEARING WAS DIRECTED TO BE HELD ON SEPTEMBER 24TH, 1969.

9. WHILE THE APPLICANT AND RESPONDENT UNION WERE ADVISED OF THE SEPTEMBER 24TH HEARING, MR. LEWIS THROUGH ADMINISTRATIVE ERROR WAS NOT GIVEN ANY NOTICE OF THAT HEARING. HOWEVER, MR. LEWIS DID ATTEND THE HEARING ON SEPTEMBER 24TH WITH VARIOUS WITNESSES AND WAS PREPARED TO PROCEED. DURING A PRELIMINARY DISCUSSION AT THE OUTSET OF THE SEPTEMBER 24TH HEARING, AND AS A RESULT OF THE CHARGES MADE BY THE UNION, THE BOARD WAS ADVISED THAT MR. LEWIS DID NOT RECEIVE NOTICE OF THE HEARING, NOR HAD HE RECEIVED THE BOARD'S DECISION RESPECTING THOSE PERSONS CHALLENGED BY THE COMPANY AS HAVING MANAGERIAL AUTHORITY. UPON BEING MADE AWARE OF THESE MATTERS THE BOARD RECESSED TO GIVE MR. LEWIS THE OPPORTUNITY TO CONSIDER THE BOARD'S DECISION AND THE UNION'S CHARGES. AFTER THE RECESS THE BOARD ADVISED MR. LEWIS THAT IT WOULD ENTERTAIN OR CONSIDER A REQUEST TO ADJOURN. HOWEVER, MR. LEWIS INDICATED THAT HE HAD CONSIDERED THE RELEVANT MATTERS AND STATED THAT HE WISHED TO PROCEED, AND DECLINED THE BOARD'S INVITATION TO REQUEST AN ADJOURNMENT.

10. MR. LEWIS THEN PROCEEDED TO CALL WITNESSES WHO WERE QUESTIONED BY THE BOARD IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE. THE VARIOUS PARTIES THEN QUESTIONED THE WITNESSES THROUGH THE BOARD. MR. LEWIS AT ALL TIMES APPEARED TO BE AWARE OF THE NATURE OF THE PROCEEDINGS AND THE ISSUE THAT HE, AS REPRESENTATIVE OF THE GROUP OF EMPLOYEES, WAS TO MEET. AT THE CONCLUSION OF THE EVIDENCE, MR. LEWIS WAS ASKED IF HE HAD ANY FURTHER WITNESSES THAT HE WISHED TO CALL. HE SAID THAT HE DID NOT. MR. INGLE, FOR THE UNION, THEN MOVED FOR A NON-SUIT INDICATING THAT THE WITNESSES CALLED BY MR. LEWIS HAD NOT TESTIFIED AS TO THE MANNER IN WHICH THREE OF THE SIGNATURES ON THE INDIVIDUAL STATEMENTS OF DESIRE WERE OBTAINED AND ACCORDINGLY, THERE WAS NOT SUFFICIENT OVERLAP TO CAST DOUBT ON THE UNION MEMBERSHIP EVIDENCE. DURING THE COURSE OF THAT ARGUMENT MR. HAMILTON, COUNSEL FOR THE RESPONDENT COMPANY, SUGGESTED THAT PERHAPS MR. LEWIS WAS NOT SUFFICIENTLY AWARE OF THE ISSUE AND THEREFORE THE BOARD AT GREAT LENGTH EXPLAINED THE NATURE OF THE ISSUE TO MR. LEWIS. MR. LEWIS INDICATED THAT HE UNDERSTOOD THE ISSUE RAISED AND STATED AGAIN THAT HE DID NOT WISH TO CALL ANY FURTHER EVIDENCE.

11. ARGUMENT BY ALL PARTIES ON MR. INGLE'S MOTION CONCLUDED AND THE BOARD RECESSED TO CONSIDER THE MOTION. THE BOARD AFTER THE RECESS ADVISED THE PARTIES THAT IT WOULD RESERVE ITS DECISION ON THE MATTER AND AT THAT TIME MR. LEWIS INDICATED TO THE BOARD THAT THERE WAS ONE PERSON WHO WAS ILL AND WHO DID NOT ATTEND THE HEARING, AND THAT HE WISHED TO CALL THAT PERSON TO PRESENT EVIDENCE. THE BOARD THEN ADJOURNED TO CONSIDER BOTH THE MOTION OF MR. INGLE AND THE REQUEST BY MR. LEWIS. SUBSEQUENTLY, BY LETTER DATED OCTOBER 1, 1969, MESSRS. MCGIBBON, HARPER & HANEY, SOLICITORS, ADVISED THE BOARD:-

"WE HAVE BEEN RETAINED BY E. LEWIS, ONE OF THE EMPLOYEES OF SUNAR INDUSTRIES LIMITED, INCLUDED IN THE BARGAINING UNIT IN ACCORDANCE WITH THE DECISION OF THE BOARD MADE ON AUGUST 28, 1969.

WE ARE ADVISED BY MR. LEWIS THAT HE ATTENDED A HEARING OF THE BOARD ON SEPTEMBER 24, 1969 NOTWITHSTANDING THE FACT THAT HE WAS NOT SERVED WITH THE NOTICE OF THE HEARING AND THE DECISION OF THE BOARD REFERRED TO ABOVE. WE ARE FURTHER ADVISED BY MR. LEWIS THAT AT THAT HEARING HE WAS NOT IN A POSITION TO CALL WITNESSES TO VERIFY ALL OF THE SIGNATURES OBTAINED ON THE ALLEGED STATEMENT OF OPPOSITION TO THE CERTIFICATION. WE FURTHER UNDERSTAND THAT THE CHAIRMAN GAVE MR. LEWIS THE OPPORTUNITY TO REQUEST AN ADJOURNMENT WHICH HE DID NOT ACCEPT.

WE HAVE REVIEWED THE MATTER WITH MR. LEWIS AND IT IS CLEAR THAT HE DID NOT UNDERSTAND THE SIGNIFICANCE OF THE EVIDENCE ADDUCED BY THE BOARD WITH RESPECT TO THE OPPOSITION STATEMENT BY CERTAIN OF THE EMPLOYEES. HAD HE APPRECIATED THE IMPORTANCE AND THE FULL SIGNIFICANCE OF THIS HE WOULD HAVE CERTAINLY REQUESTED AN ADJOURNMENT BUT UNFORTUNATELY HE WAS TOTALLY UNFAMILIAR WITH THE PROCEDURES OF THE BOARD AND WAS UNAWARE OF THE SIGNIFICANCE OF THE EVIDENCE BEING HEARD BY THE BOARD.

HE ADVISES US THAT THE WITNESS HE DID NOT HAVE AT THE HEARING, ONE JOSEPH POTWARKA, WAS ILL ON THE DAY OF THE HEARING AND COULD NOT COME.

IT IS ALSO SIGNIFICANT THAT MR. LEWIS WAS NOT SERVED WITH THE NOTICE OF HEARING AND THE DECISION OF THE BOARD RENDERED ON AUGUST 28, 1969. HAD HE RECEIVED THESE DOCUMENTS HE MAY HAVE CONSULTED COUNSEL PRIOR TO THE SEPTEMBER 24, 1969 HEARING TO ASSIST HIM WITH HIS REPRESENTATIONS BEFORE THE BOARD.

IN VIEW OF THIS WE ARE REQUESTING A FURTHER HEARING BY THE BOARD TO ENABLE MR. LEWIS TO CALL FURTHER EVIDENCE TO COMPLETELY VERIFY THE OPPOSITION STATEMENT FILED BY CERTAIN EMPLOYEES.

IN ANY EVENT WE WOULD APPRECIATE COPIES OF ALL OF THE PROCEEDINGS TAKEN BEFORE THE BOARD TO DATE IN THIS MATTER. WE HAVE A COPY OF THE EXAMINER'S REPORT AND WILL ONLY REQUIRE COPIES OF THE ACTUAL DECISIONS BY THE BOARD THROUGHOUT THE COURSE OF THESE PROCEEDINGS."

12. FIRST, WE ARE OF THE OPINION THAT THE MOTION BY THE APPLICANT UNION MUST SUCCEED. THE GROUP OF EMPLOYEES HAVE FAILED TO SHOW THE MANNER IN WHICH THE SIGNATURES ON THREE OF THE ALLEGED STATEMENTS OF DESIRE WERE OBTAINED AND, HAVING REGARD TO THE MANNER IN WHICH THESE SIGNATURES WERE OBTAINED AND THE FACT THAT THEY ARE INDIVIDUAL DOCUMENTS, WE FIND THAT THE ALLEGED STATEMENTS OF DESIRE DO NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE UNION.

13. AS TO THE REQUEST BY MR. LEWIS AND TO THE SUBSEQUENT REQUEST BY HIS SOLICITORS FOR A FURTHER HEARING, WE ARE SATISFIED THAT THIS MUST BE DENIED. MR. LEWIS' SOLICITORS SUGGEST THAT HAD MR. LEWIS RECEIVED THE NOTICE OF HEARING AND DECISION OF THE BOARD DATED AUGUST 28TH, 1969 HE MAY HAVE CONSULTED COUNSEL.

DEALING FIRST WITH THE DECISION OF AUGUST 28TH, 1969 WE WISH TO POINT OUT THAT AS A RESULT OF THAT DECISION THERE WERE 14 PEOPLE WHO WERE EXCLUDED FROM THE BARGAINING UNIT AND, ACCORDINGLY, THEIR MEMBERSHIP POSITION WAS NOT RELEVANT TO THE BOARD'S INQUIRY CONDUCTED ON SEPTEMBER 24TH, 1969. IN ADDITION, THERE WERE FOUR OTHER EMPLOYEES WHO WERE INCLUDED IN THE BARGAINING UNIT AS A RESULT OF THE BOARD'S DECISION OF AUGUST 28TH, 1969. MR. LEWIS WAS ONE OF THOSE EMPLOYEES. THE MEMBERSHIP OR LACK OF MEMBERSHIP OF THE REMAINING EMPLOYEES WAS NOT A RELEVANT CONSIDERATION WHEN THE BOARD CONDUCTED ITS INQUIRY ON SEPTEMBER 24TH, 1969 AS THESE REMAINING PERSONS WERE NOT PART OF THE OVERLAP, I.E. THEY HAD EITHER NOT SIGNED A STATEMENT OF DESIRE OR A MEMBERSHIP CARD.

14. IN ADDITION, MR. LEWIS HAD BEEN ADVISED AS TO THE MEETING OF THE EXAMINER AND THE HEARING ON AUGUST 5TH, 1969 FOR THE PURPOSE OF MAKING REPRESENTATIONS WITH RESPECT TO THE EXAMINER'S REPORT. MR. LEWIS WAS A WITNESS AT THE EXAMINER'S MEETING AND MADE NO REPRESENTATIONS ALTHOUGH HE WAS SO ENTITLED; NOR DID HE APPEAR AT THE HEARING ON AUGUST 5TH, 1969 ALTHOUGH DULY NOTIFIED. THE BOARD'S DECISION OF AUGUST 28TH, 1969 WAS AS A RESULT OF THE EXAMINER'S REPORT AND THE REPRESENTATIONS THAT WERE MADE ON AUGUST 5TH 1969, AND SINCE MR. LEWIS DID NOT APPEAR HE DID NOT RECEIVE NOTICE OF THE DECISION.

15. AS INDICATED, THE DECISION OF AUGUST 28TH, 1969 HAD NO BEARING ON THE POSITION AND WAS NOT RELEVANT TO THE ISSUE WHICH MR. LEWIS ON BEHALF OF THE GROUP OF EMPLOYEES, FAILED TO MEET. IN ADDITION, MR. LEWIS HAD COMPLETE NOTICE OF THOSE PROCEEDINGS AND CHOSE NOT TO PARTICIPATE IN THEM. IN THE CIRCUMSTANCES, THE REQUEST FOR A FURTHER HEARING CANNOT BE SUPPORTED ON THAT GROUND.

16. THE OTHER MATTER RAISED WAS THAT MR. JOSEPH POTWARKA WAS ILL ON THE DAY OF HEARING AND COULD NOT COME. IF MR. POTWARKA'S EVIDENCE WAS ESSENTIAL AND WAS THE ONLY BASIS UPON WHICH THE THREE SIGNATURES MIGHT BE PROVEN, WE MIGHT BE MORE SYMPATHETIC TO THE REQUEST THAT ANOTHER HEARING BE HELD. HOWEVER, AS STATED, THE GROUP OF EMPLOYEES DID NOT SUCCEED IN CASTING DOUBT ON THE MEMBERSHIP EVIDENCE BECAUSE THERE WAS A FAILURE TO IDENTIFY THE MANNER IN WHICH THREE OF THE SIGNATURES WERE OBTAINED. BEARING IN MIND THAT THESE ARE INDIVIDUAL STATEMENTS OF DESIRE WE SEE NO REASON WHY THE INDIVIDUALS WHO SIGNED THE STATEMENTS OF DESIRE COULD NOT HAVE TESTIFIED AS TO THE CIRCUMSTANCES UNDER WHICH THEY SIGNED THE DOCUMENTS. MR. POTWARKA THEREFORE IS NOT THE ONLY ROUTE WHEREBY THE GROUP OF EMPLOYEES COULD SATISFY THE BOARD'S REQUIREMENTS, AND NO EXPLANATION HAS BEEN GIVEN WHY THOSE PERSONS WERE NOT AVAILABLE TO TESTIFY. IN VIEW OF THE FACT THAT THE EVIDENCE WAS AVAILABLE TO

THE GROUP OF EMPLOYEES AND DID NOT REST SOLELY ON MR. POTWARKA'S TESTIMONY, WE ARE OF THE OPINION THAT THE REQUEST FOR A FURTHER HEARING ON THAT GROUND MUST BE DENIED.

17. IN ADDITION TO THESE CONSIDERATIONS, WE ARE MINDFUL THAT THE ISSUE WE ARE CONFRONTED WITH IS A SIMPLE ONE WHICH IS OFTEN DEALT WITH BY EMPLOYEE REPRESENTATIVES AND THAT MR. LEWIS HAD FULL AND COMPLETE NOTICE OF THE BOARD'S REQUIREMENTS IN THAT REGARD. HE KNEW FOR SOME MONTHS, HAVING SEEN FORM 5, THAT HE WAS REQUIRED TO SATISFY THE BOARD AS TO:

"(B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED"

AND HE HAS FAILED TO THUS SATISFY THE BOARD. BUT NOT ONLY DID HE HAVE NOTICE OF THIS REQUIREMENT, BUT HE SO CONDUCTED HIMSELF AT THE HEARING THAT WE ARE SATISFIED FROM THE MANNER IN WHICH HE CONDUCTED HIMSELF THAT HE APPRECIATED THE NATURE OF THE ISSUES AND THE REQUIREMENTS OF THIS BOARD.

18. IN THE CIRCUMSTANCES WE ARE SATISFIED THAT MR. LEWIS HAD EVERY OPPORTUNITY TO EITHER PRODUCE THE NECESSARY WITNESSES OR TO HAVE AN ADJOURNMENT. WE ARE NOT PERSUADED IN VIEW OF MR. LEWIS'S CONDUCT AND PRESENTATION OF THE EVIDENCE THAT THE FAILURE TO RECEIVE THE BOARD'S DECISION DATED AUGUST 28TH, 1969 AND THE FORMAL NOTICE OF HEARING HAMPERED MR. LEWIS IN PROCEEDING WITH THE MATTERS IN ISSUE. FROM HIS Demeanour AND CONDUCT, AND ESPECIALLY FROM THE WAY THAT HE PROCEEDED, WE ARE SATISFIED THAT HE FULLY COMPREHENDED THE ISSUES, AND WE ARE FURTHER SATISFIED THAT THE ISSUES WERE COMPREHENSIVELY EXPLAINED TO HIM AT MR. HAMILTON'S REQUEST IN ORDER THAT HE WOULD NOT BE PREJUDICED. EVEN AFTER THE EXPLANATION HE DECLINED TO CALL ANY FURTHER EVIDENCE.

19. CONSIDERING THE TOTAL SITUATION WE ARE NOT SATISFIED THAT MR. LEWIS WOULD HAVE CALLED THE WITNESS THAT HE NOW PROPOSES, EVEN IF HE HAD RECEIVED FORMAL NOTICE OF THE HEARING. WE ARE OF THE OPINION THAT THE REQUEST FOR A FURTHER HEARING WAS MADE BY MR. LEWIS ONLY ON THE BASIS OF THE FLAW IN THE EVIDENCE WHICH BECAME APPARENT DURING ARGUMENT AND AFTER MR. INGLE HAD MOVED FOR A NON-SUIT. ON THAT BASIS THE REQUEST FOR A FURTHER HEARING IS DENIED.

20. HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND SUBJECT TO THE BOARD'S DECISION DATED AUGUST 28, 1969 THE BOARD FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO EACH OF THE FOLLOWING - GENERAL MANAGER, PERSONNEL MANAGER, SECRETARY TO THE CORPORATE SECRETARY, COMPTROLLER - PERSONS REGULARLY

EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SALESMEN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED STEELWORKERS OF AMERICA, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, AND STUDENTS HIRED ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 28TH, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: OCTOBER 28, 1969.

WHILE I AM IN AGREEMENT WITH THE ULTIMATE DECISION OF MY COLLEAGUES IN THIS MATTER, I WISH TO RECORD HEREIN THAT I AM NOT NECESSARILY IN AGREEMENT WITH THE REASONING AND LANGUAGE USED BY MY COLLEAGUES IN REACHING SUCH CONCLUSION.

15959-69-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARTERS PUBLISHING COMPANY, LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R. B. CUMINE FOR THE APPLICANT;
S. R. CHARTERS, G. R. METCALFE AND D. A. PEPPIATT FOR THE
RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
J.E.C. ROBINSON: OCTOBER 30, 1969.

1. AT THE REPRESENTATION VOTE HELD IN THIS MATTER, PURSUANT TO THE BOARD'S DECISION OF MAY 6, 1969, THE RIGHT TO VOTE OF MR. JOHN WHITE WAS CHALLENGED BY THE RESPONDENT ON THE GROUND THAT HE WAS INELIGIBLE TO VOTE BECAUSE HE WAS DISCHARGED FOR CAUSE PRIOR TO THE TAKING OF THE VOTE.

2. THE APPLICANT FILED A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WITH RESPECT TO JOHN WHITE (BOARD FILE 16691-69-U).

3. BOTH CASES WERE HEARD BY THE BOARD ON THE SAME DATE. THE BOARD, WITH THE AGREEMENT OF THE PARTIES, HEARD THE ISSUE RAISED IN THE SECTION 65 CASE FIRST AND THEN HEARD REPRESENTATIONS OF THE PARTIES ON BOTH ISSUES.

4. THE BOARD CAME TO THE CONCLUSION IN THE SECTION 65 CASE THAT JOHN WHITE WAS NOT DISCHARGED CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

5. THE FOREGOING BEING THE CASE AND HAVING REGARD TO THE DECISION OF THE BOARD IN THE E. H. FERREE COMPANY LIMITED CASE, OLRB MONTHLY REPORT FEBRUARY 1967, P. 867, THE BOARD FINDS THAT JOHN WHITE WAS NOT AN ELIGIBLE VOTER AND THAT HIS BALLOT SHOULD NOT BE COUNTED.

6. THE REGISTRAR IS ACCORDINGLY DIRECTED TO COUNT THE BALLOTS CAST AT THE REPRESENTATION VOTE, WITH THE EXCEPTION OF THAT CAST BY JOHN WHITE.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: OCTOBER 30, 1969.

HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE IN THIS MATTER AND NOTING THE FACT THAT I FOUND THAT JOHN WHITE WAS NOT DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, NEVERTHELESS I HAVE NO HESITATION IN FINDING THAT JOHN WHITE WAS NOT DISCHARGED FOR CAUSE.

HAVING REGARD TO MY DECISION IN THE E. H. FERREE COMPANY LIMITED CASE, OLRB MONTHLY REPORT FEBRUARY 1967, P. 867, I WOULD ORDER THAT JOHN WHITE'S BALLOT BE INCLUDED AND COUNTED IN THE REPRESENTATION VOTE, PURSUANT TO THE BOARD'S DECISION OF MAY 6, 1969.

16192-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 183 (APPLICANT) V. MILNES FUEL OIL LTD. (RESPONDENT) V.
FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES,
LOCAL UNION No. 352 (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: J. R. MCPHERSON FOR THE APPLICANT;
C. G. RIGGS FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 8, 1969.

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2. FOLLOWING THE REPORT OF THE EXAMINER DATED JULY 31ST 1969, THE BOARD HEARD THE ORAL REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THAT REPORT AT A HEARING FOR THAT PURPOSE ON SEPTEMBER 29TH 1969. THE BOARD HAS CONSIDERED ALL OF THE EVIDENCE IN THE REPORT AND THE REPRESENTATIONS OF THE PARTIES IN ARRIVING AT ITS DECISION.

3. THE AREA OF DISPUTE BETWEEN THE PARTIES RELATES TO THE EMPLOYMENT STATUS OF THOSE PERSONS CLAIMED BY THE APPLICANT TO BE APPROPRIATE FOR INCLUSION IN A BARGAINING UNIT. THE APPLICATION FOR CERTIFICATION WAS MADE BY THE APPLICANT FOR ALL THE EMPLOYEES OF THE RESPONDENT AT TORONTO EXCEPT FOREMEN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH THE SERVICING OF OIL BURNERS. HAVING REGARD TO THE APPLICANT'S REPRESENTATIONS IT IS CLEAR THAT THOSE PERSONS FOR WHOM THE APPLICATION IS MADE ARE THOSE INVOLVED IN THE MAINTENANCE AND SERVICE OF OIL BURNERS. THE RESPONDENT OBJECTED TO THIS APPLICATION ON TWO GROUNDS; FIRSTLY THAT THERE WERE NO PERSONS EMPLOYED BY IT WITHIN THE DESCRIPTION OF THE BARGAINING UNIT AND, SECONDLY, THAT THE RESPONDENT IS PARTY TO A COLLECTIVE AGREEMENT DATED JANUARY 17TH, 1969 WITH THE INTERVENER IN WHICH THAT UNION IS RECOGNIZED AS THE BARGAINING AGENT FOR "FUEL OIL DRIVERS, FUEL OIL MAINTENANCE MEN, OIL BURNER SERVICE MEN, INSTALLATION MEN, STOCKROOM EMPLOYEES, REPAIR SHOP EMPLOYEES, MECHANICS AND FURNACE HELPERS." THE RESPONDENT CLAIMED THAT THE PERSONS ENGAGED IN SERVICING WORK ARE INDEPENDENT CONTRACTORS. THE BOARD THEREFORE, BY ITS DECISION DATED JUNE 26TH 1969, AUTHORIZED AN EXAMINER TO INQUIRE INTO THE EMPLOYMENT STATUS OF SUCH PERSONS.

4. THE PARTIES AGREED AT THE EXAMINER'S HEARING THAT THREE OF THE NINE PERSONS INVOLVED ARE INDEPENDENT CONTRACTORS. IT WAS AGREED THAT FOUR OF THE PERSONS OWNED AND OPERATED THEIR OWN TRUCKS. GASOLINE IS SUPPLIED TO THE OWNERS BY THE COMPANY BUT MAINTENANCE, OIL, INSURANCE AND LICENCE FEES ARE PAID BY THE OWNERS WHO RECEIVE AN EXTRA 50¢ PER SERVICE CALL FOR THE USE OF THE VEHICLE. THE REMAINDER OF THE PERSONS DRIVE TRUCKS OWNED AND MAINTAINED BY THE COMPANY. MR. HETHERMAN, A PERSON AGREED BY THE PARTIES TO BE AN INDEPENDENT CONTRACTOR, FALLS WITHIN THE LATTER GROUP. HE OWNS HIS TOOLS; SUBMITS A WEEKLY STATEMENT TO THE COMPANY LISTING THE CALLS HE MADE FOR WHICH HE IS PAID A FLAT RATE FOR EACH. THE TOTAL DUE IS PAID WEEKLY BY CHEQUE WITHOUT ANY DEDUCTIONS MADE BY THE COMPANY FOR INCOME-TAX, UNEMPLOYMENT INSURANCE, O.H.S.C. OR CANADA PENSION PLAN. HE STATED THAT IF HE DOES NOT PERFORM ANY CALLS HE DOES NOT GET PAID. HE DOES NOT HAVE REGULAR HOURS OF WORK AND DOES NOT PUNCH A CLOCK. MR. RICE, CLAIMED BY THE APPLICANT TO BE REPRESENTATIVE OF THOSE PERSONS IT REGARDS TO BE EMPLOYEES, IS ENGAGED IN THE SAME MANNER AS MR. HETHERMAN AND IS PAID ON A FLAT RATE BASIS FOR CALLS MADE WITHOUT ANY DEDUCTIONS FROM WEEKLY CHEQUES BY THE COMPANY. HE DID HIRE A PERSON TO ASSIST HIM BUT THE COMPANY INSISTED THAT HE COULD NOT AFFORD A HELPER IN THIS JOB AND COULD NOT RETAIN SUCH A PERSON, HOWEVER, RICE SAID HE WOULD HAVE PAID A SALARY TO HIS HELPER IF HE HAD IN FACT EMPLOYED SUCH A PERSON. HE RECEIVES HIS CALLS FROM THE YARD, BUT IT IS UP TO HIM TO ARRANGE THE WORKLOAD, AND HE DOES NOT HAVE SET HOURS FOR WORK. IF HE DID NOT RECEIVE CALLS HE WOULD NOT BE PAID. THERE ARE NO CURRENT WRITTEN CONTRACTS BETWEEN THESE PERSONS AND THE COMPANY BUT RATHER THE DUTIES ARE ARRANGED ON AN ORAL BASIS.

5. HAVING AGREED THAT MR. HETHERMAN AND TWO OTHERS ARE INDEPENDENT CONTRACTORS, THE APPLICANT MUST SATISFY THE BOARD THAT THERE IS A SUBSTANTIAL DIFFERENCE IN THE EMPLOYMENT RELATIONSHIP OF THE OTHER PERSONS REPRESENTED BY MR. RICE. ON THE EVIDENCE IT APPEARS THAT MR. RICE HAS IN FACT EXERCISED MORE INDEPENDENT CONTROL THAN MR. HETHERMAN, AND ON THAT BASIS ALONE WE COULD NOT AGREE WITH THE APPLICANT'S CONTENTION IN THIS MATTER. ALL OF THE PERSONS OWN THEIR OWN TOOLS; THEY ALL EXERCISE CONTROL IN THE TIME WHEN AND MANNER IN WHICH THEY CARRY OUT THEIR WORK; THERE IS A RISK OF LOSS IN THE SENSE THAT IF THEY DO NOT RECEIVE CALLS THEY ARE NOT PAID, BUT THEIR CHANCE OF PROFIT IS CONTROLLED BY THE FLAT RATE STRUCTURE.

6. HAVING REGARD TO THE TOTALITY OF THE EVIDENCE,

INCLUDING THE ADMISSIONS OF THE PARTIES, WE FIND THAT THERE IS SUFFICIENT EVIDENCE IN SUPPORT OF THE TESTS USUALLY APPLIED TO SITUATIONS OF THIS NATURE TO ESTABLISH THAT THE PERSONS FOR WHOM THIS APPLICATION IS MADE ARE, FOR THE PURPOSES OF THE LABOUR RELATIONS ACT, INDEPENDENT CONTRACTORS. FOR REFERENCE SEE THE AUTOMATIC FUELS LIMITED CASE, O.L.R.B. MONTHLY REPORT APRIL 1966 PAGE 22. IN THE RESULT THEREFORE, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE SECOND OBJECTION OF THE RESPONDENT TO THIS APPLICATION.

7. SINCE THERE WERE NO EMPLOYEES OF THE RESPONDENT WHICH WOULD BE INCLUDED IN THE BARGAINING UNIT SUBMITTED BY THE APPLICANT TO BE APPROPRIATE IN THIS MATTER, THE APPLICATION IS DISMISSED.

16357-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. N. WEINGARTEN, ESQ. CARRYING ON BUSINESS UNDER THE CORRECT NAME OF SHOPPERS DRUG MART (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: IAN G. SCOTT, ROBIN COWTAN FOR THE APPLICANT; ROBERT McCOMB, N. WEINGARTEN FOR THE RESPONDENT; RICHARD D. MARSH FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: OCTOBER 16, 1969.

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2. HAVING REGARD TO THE AGREEMENT BY THE PARTIES THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FLOOR MANAGER, PERSONS ABOVE THE RANK OF FLOOR MANAGER, GRADUATE AND UNDERGRADUATE PHARMACISTS AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT STUDENTS HIRED AND EMPLOYED DURING THE SCHOOL VACATION PERIOD ARE EXCLUDED FROM THE BARGAINING UNIT AND THAT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ARE INCLUDED IN THE BARGAINING UNIT.

4. IN THIS CASE A STATEMENT OF DESIRE WAS FILED BY THE GROUP OF EMPLOYEES AND THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE CONDUCTED AN INQUIRY INTO (A) THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE STATEMENT OF DESIRE AND (B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED.

5. THERE WERE TWO PERSONS THAT TESTIFIED ON BEHALF OF THE GROUP OF EMPLOYEES AND WE FIND THAT THEIR EVIDENCE WAS CONTRADICTORY WITH RESPECT TO A NUMBER OF FACTS CONCERNING THE CIRCULATION OF THE STATEMENT OF DESIRE. WE ARE SATISFIED FROM THE Demeanour OF THE WITNESSES THAT NEITHER FABRICATED TESTIMONY, BUT THAT THEY HAD EITHER FORGOTTEN OR WERE MISTAKEN WITH RESPECT TO A PART OR PARTS OF THEIR EVIDENCE. IT IS THEREFORE DIFFICULT TO DETERMINE WHICH PART OR PARTS OF THE EVIDENCE PRESENTED IS RELIABLE AND ACCORDINGLY WE ARE NOT PREPARED TO ACCEPT THE EVIDENCE WITH RESPECT TO THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED. IN VIEW OF THIS FINDING IT WILL NOT BE NECESSARY TO DEAL WITH THE OTHER SUBMISSIONS MADE BY COUNSEL.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 7TH, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16569-69-R: OIL AND GAS BURNER TECHNICIANS UNION LOCAL 1267
(APPLICANT) v. BERMAC BURNER SERVICE (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 23, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED SEPTEMBER 29, 1969, IN THIS MATTER.

3. THE RESPONDENT HAS ALLEGED THAT MURRAY MARTIN AND GEORGE McMEEKEN ARE NOT EMPLOYEES OF THE RESPONDENT BUT ARE INDEPENDENT CONTRACTORS. THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT ESTABLISHES THAT MARTIN AND McMEEKEN WERE INFORMED WHEN THEY COMMENCED WORKING FOR THE RESPONDENT THAT THEY WOULD WORK ON A PIECE-WORK BASIS CLEANING OUT FURNACES IN THE SUMMER AND RECEIVE A SALARY DURING THE WINTER MONTHS. THEY USE A VACUUM CLEANER AND OTHER TOOLS THAT ARE NECESSARY TO CLEAN FURNACES AND THIS EQUIPMENT IS OWNED BY THE RESPONDENT. THE TRUCKS DRIVEN BY MARTIN AND McMEEKEN ARE SUPPLIED BY THE COMPANY AND THE COMPANY CARRIES THE NECESSARY INSURANCE AND PAYS FOR ALL REPAIRS, GAS AND OIL. THERE IS NO WRITTEN CONTRACT BETWEEN THE RESPONDENT AND MARTIN AND McMEEKEN.

4. THE EVIDENCE RELIED UPON BY THE RESPONDENT IN SUPPORT OF ITS CONTENTION THAT MARTIN AND McMEEKEN ARE INDEPENDENT CONTRACTORS IS THE FACT THAT THE RESPONDENT DOES NOT DEDUCT INCOME TAX OR HOSPITALIZATION FROM THE AMOUNTS PAID TO MARTIN AND McMEEKEN AND NO DEDUCTIONS ARE MADE FOR UNEMPLOYMENT INSURANCE. IN ADDITION, MARTIN AND McMEEKEN DO NOT RECEIVE HOLIDAY PAY FOR ANY TIME WORKED DURING THE SUMMER OR THE WINTER. THIS EVIDENCE IS CONSISTENT WITH THE RESPONDENT'S CONTENTION THAT MARTIN AND McMEEKEN ARE INDEPENDENT CONTRACTORS. HOWEVER, IN VIEW OF THE EVIDENCE WITH RESPECT TO THE EXTENT OF CONTROL EXERCISED BY THE RESPONDENT OVER THESE PERSONS, THE OWNERSHIP OF TOOLS BY THE RESPONDENT AND THE ABSENCE OF A RISK OF LOSS BY MARTIN AND McMEEKEN, THE EVIDENCE THAT NO DEDUCTIONS ARE MADE BY THE RESPONDENT AND NO PROVISION IS MADE FOR HOLIDAY PAY IS EQUALLY CONSISTENT WITH THE FACT THAT THE RESPONDENT MAY BE ACTING CONTRARY TO CERTAIN STATUTORY REQUIREMENTS.

5. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT MARTIN AND McMEEKEN ARE NOT INDEPENDENT CONTRACTORS BUT ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

6. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OIL

FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 25, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16580-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. MICRODENT LABORATORIES LTD. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: G. CHARNEY, CORNELIS GIES,
R. A. LOADER, FOR THE APPLICANT; F. R. VON VEI, H. SOMMER,
FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: OCTOBER 7, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT IN ITS REPLY CHARGED THAT THE APPLICANT HAD VIOLATED SECTION 48 OF THE LABOUR RELATIONS ACT IN THAT MR. C. GIES, AN ORGANIZER FOR THE APPLICANT, CONDUCTED THE ORGANIZATION CAMPAIGN ON AUGUST 15TH 1969 IN FULL VIEW OF MR. H. SOMMERS, A MEMBER OF MANAGEMENT. THERE WERE OTHER MATTERS IN DISPUTE IN THIS APPLICATION HOWEVER, FOR THE PURPOSES OF THIS DECISION IN ITS RESULT IT IS ONLY NECESSARY TO DEAL WITH THE ABOVE NOTED CHARGE.

2. THE EVIDENCE WAS THAT MR. HERMAN SOMMERS IS THE PRESIDENT OF THE RESPONDENT. HE KNEW MR. GIES PRIOR TO THIS TIME THROUGH A PREVIOUS PERSONAL CONNECTION WITH THE UNION AND ON AUGUST 15TH, MR. GIES ATTENDED AT HIS OFFICE AND ADVISED MR. SOMMERS THAT HE WANTED TO ORGANIZE THE DENTAL

TECHNICIANS EMPLOYED BY THE COMPANY. MR. GIES ASKED MR. SOMMERS IF HE COULD SEE THE GROUP OF EMPLOYEES AND MR. SOMMERS GAVE PERMISSION FOR HIM TO BE THERE DURING LUNCH EITHER INSIDE OR OUTSIDE THE DOOR. MR. GIES RETURNED AT NOON, MR. SOMMERS INTRODUCED HIM TO THE GROUP OF EMPLOYEES AS A UNION ORGANIZER FOR THE DENTAL TECHNICIANS AND MR. GIES SPOKE TO THE EMPLOYEES FOR ABOUT ONE HALF OF AN HOUR. MR. SOMMERS, WITH THE EXCEPTION OF TAKING A TELEPHONE CALL IN HIS OWN OFFICE, REMAINED IN THE ROOM THROUGHOUT THE TALK. MR. GIES ASKED THE EMPLOYEES WHO WANTED TO SIGN A CARD TO MEET HIM OUTSIDE AND EIGHT EMPLOYEES LEFT AND ONE SIGNED A CARD AND HANDED \$1.00 TO MR. GIES INSIDE THE BUILDING IN THE PRESENCE OF MR. SOMMERS. NEITHER MR. GIES OR MR. SOMMERS TOLD THE EMPLOYEES THAT MR. SOMMERS WANTED THEM TO SIGN FOR THE UNION OR SUGGESTED THAT THEY SHOULD DO SO.

3. WHILE WE ACCEPT THAT BOTH MR. GIES AND MR. SOMMERS ACTED IN GOOD FAITH, IT MUST BE CONCLUDED FROM THE EVIDENCE OF THE APPROACH MADE BY THE UNION REPRESENTATIVE TO THE MANAGEMENT OF THE COMPANY THAT MR. SOMMERS APPARENT SUPPORT WOULD INFLUENCE THE EMPLOYEES IN FAVOUR OF THE UNION. IN DEALING WITH A SIMILAR SITUATION WE HAVE REFERENCE TO THE CANADIAN FABRICATED PRODUCTS LIMITED CASE C.C.H. TRANSFER BINDER 1949-54, P. 17,090 WHERE, IN DEALING WITH THE EFFECT OF THE COMPANY SUPPORT TO AN INTERVENING UNION, THE BOARD STATED AS FOLLOWS:

"UNDOUBTEDLY THE ORGANIZATION BRADD REPRESENTED GAINED SOME STRENGTH, THE EXTENT OF WHICH IT IS OF COURSE IMPOSSIBLE TO MEASURE, THROUGH FEICK'S ENTHUSIASTIC CHAMPIONING OF ITS CAUSE. NEVERTHELESS, ALTHOUGH THERE WOULD APPEAR TO BE A NUMBER OF CIRCUMSTANCES WHICH LEAD ONE TO SUSPECT THAT BRADD'S RELATIONS WITH FEICK WERE NOT ENTIRELY AT ARM'S LENGTH, THE EVIDENCE PRESENTED AT THE HEARING FALLS SHORT OF ESTABLISHING THAT BRADD SOLICITED FEICK'S SUPPORT. ON THE OTHER HAND, A DISTINCTION HAS TO BE DRAWN BETWEEN AN ORGANIZATION WHICH IS THE PASSIVE RECIPIENT OF UN-SOLICITED FAVOURS AND AN ORGANIZATION WHOSE OFFICERS OR OFFICIALS ACTIVELY AVAIL THEMSELVES OF FAVOURITISM BY AN EMPLOYER OR AN EMPLOYER'S REPRESENTATIVE AS AN AID IN THE RECRUITMENT OF MEMBERS. IN THIS CASE, BRADD USED THE FACT OF FEICK'S SUPPORT FOR THE INTERVENER TO INDUCE EMPLOYEES TO BECOME MEMBERS OF THE INTERVENER. IT FOLLOWS THEN

THAT IF THE INTERVENER HAD APPLIED FOR CERTIFICATION, ITS APPLICATION WOULD HAVE BEEN DISMISSED UNDER SECTION 9 OF THE ACT AND THAT BY VIRTUE OF SECTION 34 OF THE ACT ANY AGREEMENT IT MAY HAVE ENTERED INTO WITH THE RESPONDENT IS INVALID AND CANNOT OPERATE AS A BAR TO THE PRESENT APPLICATION. IT THEREFORE BECOMES UNNECESSARY FOR US TO CONSIDER THE FINAL OBJECTION TO THE AGREEMENT RAISED BY THE APPLICANT, NAMELY, THAT THE AGREEMENT WAS ENTERED INTO IN THE SHADOW OF THE APPLICANT'S ORGANIZATIONAL CAMPAIGN."

4. WHAT TOOK PLACE ON AUGUST 15TH WAS NOT MERELY A DISCUSSION OF THE ADVANTAGES AND DISADVANTAGES OF TRADE UNION REPRESENTATION, BUT WAS A SOLICITATION OF MEMBERSHIP WITH A VIEW OF THE APPLICANT BECOMING THE BARGAINING AGENT FOR EMPLOYEES OF THE RESPONDENT. WHILE THE PRESENCE OF THE PRESIDENT OF THE COMPANY AT SUCH A MEETING MAY HAVE BEEN ON HIS OWN PART TOTALLY INNOCENT AND HIS DEALINGS WITH THE UNION AT ARMS LENGTH, IN OUR VIEW HIS ACTIONS IN THE CIRCUMSTANCES OUTLINED ABOVE COULD NOT HELP BUT INFLUENCE HIS EMPLOYEES AND THAT THIS IS THE KIND OF SUPPORT THAT THE APPLICANT WAS SEEKING WHEN MR. GIES APPROACHED HIM IN THIS REGARD. WHILE THE RESPONDENT RAISED AN ISSUE WITH RESPECT TO ITS OWN ALLEGED VIOLATION OF SECTION 48 OF THE ACT, IN ANY EVENT, FACED WITH THE EVIDENCE GIVEN IN SUPPORT OF THAT POSITION THE BOARD MUST CONSIDER WHETHER SECTION 10 OF THE ACT APPLIES. SECTION 10 IS AS FOLLOWS:

"THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN. R.S.O. 1960, c. 202, s. 10."

5. WE FIND ON THE EVIDENCE THAT THE RESPONDENT DID BY THE ACTIONS OF ITS PRESIDENT CONTRIBUTE "OTHER SUPPORT" TO THE TRADE UNION WITHIN THE MEANING OF SECTION 10 OF THE ACT. IN SUCH CIRCUMSTANCES, HAVING REGARD TO THE PROVISIONS OF THAT SECTION, THE BOARD CANNOT CERTIFY THE APPLICANT TRADE UNION. IN THIS RESULT, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE ALLEGED VIOLATION OF SECTION 48.

6. FOR THE ABOVE REASONS, THIS APPLICATION IS DISMISSED.

DISSENT OF BOARD MEMBER D. B. ARCHER: OCTOBER 7, 1969.

I HAVE NO QUARREL WITH THE FACTS AS SET OUT BY THE MAJORITY. SOMMERS, THE PRESIDENT OF THIS SMALL COMPANY (APPROXIMATELY 20 EMPLOYEES), WAS A FORMER UNION OFFICIAL. WHEN CONTACTED BY HIS FRIEND AND UNION ORGANIZER GIES, HE AGREED TO ALLOW GIES TO SPEAK TO HIS EMPLOYEES. GIES DID SPEAK TO THEM DURING THEIR NOON HOUR AND INVITED ANY WHO WISHES TO JOIN THE UNION TO MEET HIM OUTSIDE, SIGN A CARD AND PAY A DOLLAR. A NUMBER DID SO. THERE IS NO SUGGESTION THAT SOMMERS IN ANY WAY, BY WORD OR DEED, TOOK SIDES IN THIS TRANSACTION. AFTER THE APPLICATION FOR CERTIFICATION SOMMERS THROUGH HIS COUNSEL SUGGESTED THE COMPANY'S ACTIONS SHOULD DISQUALIFY THE UNION. THIS RAISES TWO OR THREE INTERESTING POINTS, DOES A COMPANY HAVE TO BE ON NON-SPEAKING OR HOSTILE TERMS WITH A UNION IN ORDER FOR THE UNION TO QUALIFY FOR CERTIFICATION IN FRONT OF THIS BOARD? CAN A COMPANY BENEFIT FROM ITS OWN WRONGDOING? DOES IT HAVE TO COME TO THIS BOARD WITH CLEAN HANDS IF IT SEEKS RELIEF? CAN A COMPANY MANUFACTURE EVIDENCE TO DISCREDIT THE UNION?

MY ANSWER TO THE ABOVE QUESTION IS NO. UNIONS AND COMPANIES CAN HAVE FRIENDLY RELATIONS AND STILL BE PERFECTLY ABLE TO PERFORM THEIR PROPER FUNCTIONS. I WISH TO MAKE IT VERY CLEAR THAT HAD THE ISSUE BEEN RAISED BY AN EMPLOYEE CONCERNED OR ANOTHER UNION, I WOULD HAVE TAKEN AN ENTIRELY DIFFERENT VIEW. IF THE COMPANY ACTED IN GOOD FAITH IT WOULD NOT NOW BE RAISING THE ISSUE, IF AS I MUST ASSUME IT MANUFACTURED THE EVIDENCE FOR THE PURPOSE OF DEFEATING THE UNION IT SHOULD NOT BE ALLOWED TO DO SO.

IN THIS CASE I SEE NOTHING IN THE UNION'S ACTIONS THAT VIOLATES ANY UNION PRACTICE. I DO NOT BELIEVE IT NOW LIES IN THE COMPANY'S MOUTH TO USE ITS ACTIONS, ASSUMING THEY WERE WRONGFUL ACTIONS, TO BENEFIT THEMSELVES AT THE EXPENSE OF THE UNION WHO ACCEPTED THEM IN GOOD FAITH. I WOULD HAVE GIVEN NO WEIGHT TO THE COMPANY'S OBJECTIONS AND WOULD HAVE CERTIFIED THE UNION.

16606-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) V. KITCHENS OF SARA LEE (CANADA) LTD.
(RESPONDENT) V. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL
UNION OF AMERICA LOCAL 264 (INTERVENER #1) V. INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: H. BUCHANAN AND A. GLEASON FOR THE APPLICANT, A.J. CLARK, F. HAYWARD AND A. VYSE FOR THE RESPONDENT, E. ROVET AND MORRIS ZIMMERMAN FOR INTERVENER #1, W. WALKER FOR INTERVENER #2.

DECISION OF THE BOARD: OCTOBER 30, 1969.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT CURRENTLY REPRESENTED BY BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA LOCAL 264.

2. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS WHO ARE ALSO INCLUDED IN THE BARGAINING UNIT REPRESENTED BY LOCAL 264.

3. THE APPLICANT AND THE RESPONDENT OPPOSED THE APPLICATION OF LOCAL 796 AND ESTABLISHED THAT THE STATIONARY ENGINEERS WERE INCLUDED IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT WITH LOCAL 264 SINCE 1965. THE COLLECTIVE AGREEMENT PROVIDES SEPARATE CLASSIFICATIONS AND WAGE RATES FOR STATIONARY ENGINEERS. ALL OTHER PROVISIONS OF THE COLLECTIVE AGREEMENT INCLUDING HOURS OF WORK, OVERTIME AND SHIFT PREMIUM APPLY TO ALL EMPLOYEES IN THE BARGAINING UNIT INCLUDING STATIONARY ENGINEERS. A STATIONARY ENGINEER WAS ON THE BARGAINING COMMITTEES WHICH NEGOTIATED THE COLLECTIVE AGREEMENTS AND LATER BECAME THE CHIEF STEWARD. STATIONARY ENGINEERS PERFORM MAINTENANCE WORK THROUGHOUT THE PLANT AND SET UP PRODUCTION EQUIPMENT DURING OFF SHIFT HOURS IN ADDITION TO THEIR REGULAR BOILER ROOM FUNCTIONS.

4. LOCAL 796 TOOK THE POSITION THAT BECAUSE OF ITS RECOGNIZED STATUS AS A CRAFT UNION IT IS ENTITLED TO REPRESENT STATIONARY ENGINEERS AND HELPERS EMPLOYED BY THE RESPONDENT. WHILE LOCAL 796 ACKNOWLEDGED THAT BECAUSE OF THE HISTORY OF REPRESENTATION BY LOCAL 264 OF THE STATIONARY ENGINEERS, LOCAL 796 WOULD NOT HAVE MUCH HOPE OF CARVING OUT ITS CRAFT BARGAINING UNIT FROM THE UNIT REPRESENTED BY LOCAL 264 IF IT SOUGHT TO DO SO IN A SEPARATE APPLICATION. HOWEVER, IT WAS THE POSITION OF LOCAL 796 THAT IF THE APPLICANT WERE SUCCESSFUL IN ITS ATTEMPT TO DISPLACE LOCAL 264 AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT, THE HISTORY OF REPRESENTATION BY LOCAL 264 WOULD, AT THAT TIME, BE TERMINATED.

SINCE THE HISTORY OF REPRESENTATION BY LOCAL 264 WOULD BE ENDED, SUCH HISTORY SHOULD NOT STAND IN THE WAY OF THE APPLICATION FOR CERTIFICATION MADE BY LOCAL 796 AND THE BOARD SHOULD NOT TAKE SUCH HISTORY INTO ACCOUNT AND SHOULD NOT EXERCISE ITS DISCRETION AGAINST LOCAL 796 UNDER SECTION 6(2) OF THE ACT.

5. IT IS TO BE NOTED THAT THE PROVISIONS OF SECTION 6(2) OF THE ACT WHICH GIVE THE BOARD DISCRETION IN THESE MATTERS READS AS FOLLOWS:

... BUT THE BOARD SHALL NOT BE REQUIRED TO APPLY THIS SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

6. ON THE FACTS OF THIS CASE, IT IS ABUNDANTLY CLEAR THAT AT THE TIME THIS APPLICATION WAS MADE AND, FOR THAT MATTER, AT THE TIME LOCAL 796 INTERVENED IN THIS APPLICATION, THE STATIONARY ENGINEERS WERE INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT. IT IS THIS FACT THAT GIVES THE BOARD ITS DISCRETION UNDER SECTION 6(2).

7. IN PREVIOUS CASES WHERE THE BOARD HAS EXERCISED ITS DISCRETION UNDER SECTION 6(2) OF THE ACT, IT HAS DONE SO IN VIEW OF THE HISTORY OF COLLECTIVE BARGAINING AS EVIDENCED BY THE PARTICULAR FACTS OF EACH CASE. IT HAS CONSIDERED THIS HISTORY, NOT MERELY BECAUSE THE INCUMBENT TRADE UNION HAS REPRESENTED THE STATIONARY ENGINEERS, BUT, MORE IMPORTANT, BECAUSE THE STATIONARY ENGINEERS HAVE A HISTORY OF BEING INCLUDED IN AN INDUSTRIAL TYPE BARGAINING UNIT WITH OTHER EMPLOYEES AND HAVE USUALLY ENJOYED RECOGNITION OF THEIR SPECIAL SKILLS TOGETHER WITH EQUALITY OF REPRESENTATION WITH THE OTHER EMPLOYEES BY THE TRADE UNION WHICH ACTED AS BARGAINING AGENT. SUCH HISTORY IS NOT DESTROYED MERELY BY A CHANGE IN BARGAINING AGENTS. BARGAINING AGENTS MAY BE CHANGED THROUGH CERTIFICATION PROCEDURES, HOWEVER, THEY MAY ALSO BE CHANGED THROUGH THE SUCCESSOR PROVISIONS CONTAINED IN SECTIONS 47 AND 47A OF THE ACT.

8. WHILE THE HISTORY OF REPRESENTATION OF LOCAL 264 MAY BE ENDED AS THE RESULT OF THE PRE-HEARING REPRESENTATION VOTE WHICH HAS BEEN CONDUCTED IN THIS CASE, THIS FACT DOES NOT ERADICATE THE HISTORY IN SO FAR AS IT RELATES TO THE FACT THAT THE STATIONARY ENGINEERS HAVE BEEN BARGAINED FOR AS PART OF AN OVERALL INDUSTRIAL BARGAINING UNIT IN THE MANNER DESCRIBED ABOVE.

9. WE MUST THEREFORE FIND, FOR THE REASONS SET OUT HEREIN, THAT THE BOARD RETAINS ITS DISCRETION UNDER THE PROVISIONS OF SECTION 6(2) IN THE CIRCUMSTANCES OF THIS CASE.
10. HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE LILY CUP CASE, OLRB MONTHLY REPORT, JANUARY 1961, P. 370, THE CANADA FOUNDRIES AND FORGINGS CASE (1961) C.C.H. CANADIAN LABOUR LAW REPORTER 16,203 C.L.S. 76-753, THE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE #1501-61-R, THE DOMINION FABRICS CASE, BOARD FILE #2331-61-R, THE DARLING & COMPANY OF CANADA, LIMITED CASE, OLRB MONTHLY REPORT, NOVEMBER 1961, P. 273, AND THE HISTORY OF COLLECTIVE BARGAINING ON BEHALF OF THE STATIONARY ENGINEERS BY THE RESPONDENT AND LOCAL 264 AS EVIDENCED BY THE CONTINUOUS REPRESENTATION BY LOCAL 264 OF THE STATIONARY ENGINEERS AND THEIR HELPERS, THE SEPARATE CLASSIFICATIONS AND WAGE RATES FOR STATIONARY ENGINEERS CONTAINED IN THE COLLECTIVE AGREEMENT, THE COMMUNITY OF INTEREST BETWEEN THE STATIONARY ENGINEERS AND OTHER EMPLOYEES INCLUDING THE SAME HOURS OF WORK, OVERTIME, SHIFT PREMIUM PROVISIONS OF THE COLLECTIVE AGREEMENT, THE FACT THAT THE STATIONARY ENGINEERS PERFORM MAINTENANCE AND SET-UP WORK THROUGHOUT THE PLANT AND THE OPPOSITION TO THE APPLICATION OF LOCAL 796 BY THE RESPONDENT AND THE APPLICANT, THE BOARD IS OF OPINION THAT IT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT AND FINDS THAT THE UNIT PROPOSED BY THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 IS INAPPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE.
11. THE APPLICATION OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 IS THEREFORE DISMISSED.
12. THE BOARD DIRECTS THE REGISTRAR TO DESTROY THE BALLOTS CAST IN VOTING CONSTITUENCY #1 IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.
13. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
14. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHINGACOUSY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RETAIL CLERKS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD FURTHER FINDS THAT THE STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS ARE INCLUDED IN THE BARGAINING UNIT AND WERE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #2 AND DIRECTS THAT THEIR SEGREGATED BALLOTS CAST IN VOTING CONSTITUENCY #2 SHALL BE PLACED IN THE BALLOT BOX.

16. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

17. THE BOARD FURTHER DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN VOTING CONSTITUENCY #2 TO BE COUNTED AND REPORT TO THE BOARD.

16690-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.)
(APPLICANT) v. THE BOARD OF GOVERNORS OF THE PETERBOROUGH
CIVIC HOSPITAL (RESPONDENT) v. CANADIAN UNION OF PUBLIC
EMPLOYEES (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: I. SCOTT, B. COFFEY AND J. GRIEVE FOR THE APPLICANT, D. G. PYLE, L. B. DOIRON AND P.A. CHEVALIER FOR THE RESPONDENT, A. RISELEY AND H. WRIGHTMAN FOR THE INTERVENER.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES:

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3. AT THE OUTSET OF THE HEARING THE CHAIRMAN OF THE PANEL INQUIRED OF THE PARTIES AS TO WHETHER THERE WAS ANY QUESTION CONCERNING THE ABILITY OF THE APPLICANT TO REPRESENT THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION. THE REPRESENTATIVE OF THE RESPONDENT ADVISED THE BOARD THAT THE RESPONDENT HAD NO OBJECTIONS TO MAKE AS TO THE ABILITY OF THE APPLICANT TO REPRESENT EMPLOYEES OF THE RESPONDENT. NEITHER COUNSEL FOR THE APPLICANT NOR THE REPRESENTATIVE OF THE INTERVENER RAISED ANY OBJECTION ON THIS POINT.

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL TECHNOLOGISTS AND TECHNICIANS IN THE EMPLOY OF THE RESPONDENT IN THE DEPARTMENT OF PATHOLOGY, SAVE AND EXCEPT CHIEF LABORATORY TECHNOLOGIST AND PERSONS ABOVE THE RANK OF CHIEF LABORATORY TECHNOLOGIST, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENT TECHNICIANS IN THE SCHOOL OF MEDICAL TECHNOLOGY, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS BOUND BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #19, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #796, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 18, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: OCTOBER 3, 1969.

I AM UNABLE AT THIS TIME TO CONCUR WITH THE DECISION OF MY COLLEAGUES IN THIS CASE.

WHILE I AM IN AGREEMENT THAT AN INQUIRY WAS MADE BY THE CHAIRMAN AT THE OUTSET OF THE HEARING, I AM OF THE OPINION THAT IT WAS THE DUTY OF THE BOARD IN THIS CASE TO DETERMINE WHETHER, UNDER THE OBJECTS CLAUSE OF ITS SUPPLEMENTARY LETTERS PATENT, THE APPLICANT WAS ABLE TO ACCEPT INTO MEMBERSHIP THE PERSONS WHO COMPRISE THIS BARGAINING UNIT.

IN LIGHT OF THE DECISION OF THIS BOARD IN THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) V. VERSAFOOD SERVICES LIMITED INSTITUTIONS DIVISION UNIVERSITY OF GUELPH O.L.R.B. MONTHLY REPORT, JANUARY 1968 @ P. 988, AND ITS PRACTICE AS SET FORTH IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE O.L.R.B. MONTHLY REPORT, AUGUST 1967, I WOULD NOT CERTIFY THE APPLICANT AT THIS TIME WITHOUT ADDITIONAL INFORMATION AND REPRESENTATIONS IN THAT REGARD.

16706-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A.
(APPLICANT) v. WHEATON GLASS COMPANY OF CANADA LIMITED
(RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: FRED CHILDS FOR THE APPLICANT;
J. P. BORDEN, H. H. SHARPLESS FOR THE RESPONDENT; MARGARET
MANG, MIKE GIEFERT FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: OCTOBER 15, 1969.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE
RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS
ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF CONSTITUTE
A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLEC-
TIVE BARGAINING.

3. THERE WAS FILED IN OPPOSITION TO THIS APPLICATION
A STATEMENT OF DESIRE SIGNED BY TWENTY-TWO EMPLOYEES OF THE
RESPONDENT, TWELVE OF WHOM WERE ALSO CLAIMED BY THE APPLICANT
IN MEMBERSHIP. IF THE PETITION WAS ACCORDED FULL WEIGHT THEN
THERE WOULD BE UNQUALIFIED EVIDENCE OF MEMBERSHIP SUBMITTED
BY THE UNION LESS THAN THE REQUIREMENT UNDER THE ACT FOR
CERTIFICATION. THE BOARD THEREFORE CONDUCTED ITS USUAL IN-
QUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF
THE PETITION. NEITHER WITNESS WHO APPEARED FOR THE OBJECTORS
COULD BY PERSONAL KNOWLEDGE TELL THE BOARD OF THE CIRCUM-
STANCES SURROUNDING A SUFFICIENT NUMBER OF SIGNATURES ON THE
PETITION THAT WOULD MAKE IT RELEVANT IN CASTING THE APPLI-
CANT'S MEMBERSHIP EVIDENCE IN DOUBT. THE ONUS RESTS WITH
THE OBJECTORS TO SATISFY THE BOARD THAT THE PETITION REFLECTS
THE VOLUNTARY DESIRES OF THOSE PERSONS WHO SIGN IT AND IN SO
DOING MUST BE ABLE, BY DIRECT EVIDENCE, TO SATISFY THE
BOARD'S REQUIREMENTS SET OUT IN FORM 5 (GREEN SHEET) AS
POSTED WHICH ARE (A) THE CIRCUMSTANCES CONCERNING THE ORIGIN-
ATION OF THE MATERIAL FILED AND (B) THE MANNER IN WHICH EACH
OF THE SIGNATURES WAS OBTAINED. THE OBJECTORS DID NOT
PROPERLY IDENTIFY A SUFFICIENT NUMBER OF SIGNATURES APPEAR-
ING ON THE PETITION TO MATERIALLY AFFECT THE EVIDENCE OF
MEMBERSHIP SUBMITTED BY THE APPLICANT. ON THIS GROUND ALONE,
THEREFORE, WE FIND THAT THE PETITION MUST FAIL.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE
EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE
EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE
TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT

ON SEPTEMBER 22ND 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16726-69-R: THE AMALGAMATED JEWELRY WORKERS' UNION, LOCAL 33, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) v. PRE-MET MANUFACTURERS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: G. CHARNEY, C. GIES AND R. A. LOADER FOR THE APPLICANT; ELLIOTT L. MARRUS FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
P. J. O'KEEFE: OCTOBER 30, 1969.

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4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, WHO ARE ENGAGED IN THE PRODUCTION OF ARTICLES OF JEWELLERY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SHIPPERS AND DELIVERY PERSONNEL, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN 50 PER CENT, BUT NOT MORE THAN 55 PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 26, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. AT THE HEARING OF THIS MATTER, THE APPLICANT, HAVING LED EVIDENCE WITH RESPECT TO ALLEGED VIOLATIONS ON THE PART OF THE RESPONDENT OF SECTIONS 48, 50(c) AND 52 OF THE LABOUR RELATIONS ACT, REQUESTED THE BOARD TO APPLY THE PROVISIONS OF SECTION 7(5) OF THE CASE. HAVING REGARD TO ALL OF THE EVIDENCE VIEWED OBJECTIVELY, AS IT MUST BE IN CASES SUCH AS THIS, AND TO

THE REPRESENTATIONS OF COUNSEL FOR BOTH PARTIES, THE BOARD FINDS THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE.

7. THE BOARD THEREFORE, PURSUANT TO THE PROVISIONS OF SECTION 7(5) OF THE ACT, DIRECTS THAT A CERTIFICATE ISSUE TO THE APPLICANT WITHOUT THE TAKING OF A REPRESENTATION VOTE.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: OCTOBER 30, 1969.

I DISSENT.

HAVING REGARD TO THE EVIDENCE OF THE WITNESSES CALLED BY THE APPLICANT THAT THEY WOULD EXPRESS THEIR TRUE WISHES IF A REPRESENTATION VOTE WERE HELD, I WOULD NOT HAVE INVOKED THE PROVISIONS OF SECTION 7(5) OF THE LABOUR RELATIONS ACT, BUT WOULD INSTEAD HAVE PROCEEDED WITH SUCH REPRESENTATION VOTE.

16763-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. HOLLINGER MINES LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: D. M. STOREY, L. BEHIE FOR THE APPLICANT; P. C. FINLAY Q.C., C. B. ROSS FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 23, 1969.

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2. THE RESPONDENT OBJECTED TO THE TIMELINESS OF THIS APPLICATION BECAUSE THE APPLICANT HAD MADE A SIMILAR APPLICATION FOR CERTIFICATION, A HEARING FOR WHICH WAS HELD ON APRIL 8TH, 1969. THE BOARD THEN LISTED THAT APPLICATION FOR CONTINUATION OF HEARING FOR THE PURPOSE OF INQUIRING INTO THE CIRCUMSTANCES REGARDING CERTAIN EVIDENCE OF MEMBERSHIP. THE APPLICANT THEREAFTER REQUESTED LEAVE TO WITHDRAW THAT APPLICATION AND THE BOARD, FOLLOWING ITS USUAL PRACTICE, DISMISSED IT ON JUNE 3RD, 1969. THE PRESENT APPLICATION WAS MADE ON SEPTEMBER 26TH, 1969. IT MUST BE CONSIDERED THAT THE PROPOSED INVESTIGATION OF THE MEMBERSHIP EVIDENCE WAS AT THE INSTIGATION OF THE BOARD AFTER A CHECK OF THE APPLICATION FOR MEMBERSHIP CARDS WAS MADE. THERE WAS, HOWEVER, NO FINDING MADE BY THE BOARD ON THAT ISSUE OF WHETHER THE EVIDENCE WAS IN PROPER FORM OR NOT. IN THESE CIRCUMSTANCES IT HAS NOT BEEN THE POLICY OF THE BOARD TO IMPOSE A

BAR AT THE TIME THE APPLICATION IS WITHDRAWN. WE ARE NOT PERSUADED THAT THERE ARE ANY SPECIAL CIRCUMSTANCES IN THIS MATTER THAT WOULD SUPPORT A DEVIATION FROM THE BOARD'S POLICY IN SUCH MATTERS. THEREFORE WE FIND THIS APPLICATION TO BE TIMELY.

3. MR. C. F. ROBICHEAU, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LISTS OF EMPLOYEES FILED BY THE APPLICANT IN THIS MATTER.

16835-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 772 (APPLICANT) V. CATALYTIC CONSTRUCTION COMPANY OF CANADA, LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: FRED G. GRIGSBY FOR THE APPLICANT, ROBERT J. MULLINS FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 27, 1969.

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2. THE APPLICANT APPLIED FOR A UNIT DESCRIBED AS ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM AND ON ASSOCIATED EQUIPMENT. WHILE THE APPLICANT CAN APPLY AND BE CERTIFIED FOR AN ALL-EMPLOYEE UNIT OR FOR ITS USUAL CRAFT BARGAINING UNIT, IT IS TO BE NOTED THAT THE UNIT APPLIED FOR IN THIS CASE IS NEITHER ONE NOR THE OTHER. WHAT THE APPLICANT HAS ATTEMPTED TO DO IN THIS CASE IS TO ENLARGE ITS USUAL CRAFT BARGAINING UNIT. THE APPLICANT FAILED TO ESTABLISH THAT THE OPERATION OF THE "ASSOCIATED EQUIPMENT" REQUIRED THE EXERCISE OF TECHNICAL SKILLS OR WAS A CRAFT BY REASON OF WHICH EMPLOYEES OPERATING SUCH EQUIPMENT ARE DISTINGUISHABLE FROM OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT AS REQUIRED BY SECTION 6(2) OF THE ACT. THE BOARD CERTIFIES UNIONS AS BARGAINING AGENT FOR EMPLOYEES, NOT AS BARGAINING AGENT FOR WORK OR CLASSES OF WORK. IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS THAT THE APPROPRIATE UNIT IS THE APPLICANT'S USUAL CRAFT BARGAINING UNIT.

3. THE BOARD THEREFORE FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM BY THE RESPONDENT AT THE AMHERSTBURG PLANT OF PEACE RIVER MINING AND SMELTING, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 17, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16856-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) v. MICRODENT LABORATORIES LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: G. CHARNEY AND C. GIES FOR THE APPLICANT, F. R. VON VEI AND H. SOMMER FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 28, 1969.

2. THE RESPONDENT IN THIS MATTER HAS SUBMITTED THAT THIS APPLICATION BE DISMISSED ON THE GROUNDS THAT IN AN EARLIER APPLICATION INVOLVING THE SAME PARTIES, BOARD FILE 16580-69-R, THE BOARD IN ITS DECISION OF OCTOBER 7, 1969, DISMISSED THE APPLICATION BECAUSE THE ACTIONS OF THE RESPONDENT AMOUNTED TO THE CONTRIBUTION OF "OTHER SUPPORT" TO THE TRADE UNION WITHIN THE MEANING OF SECTION 10 OF THE ACT. IN THAT CASE, THE PRESIDENT OF THE RESPONDENT INTRODUCED THE UNION ORGANIZER TO HIS EMPLOYEES AND WAS PRESENT DURING THE TIME WHEN THE EMPLOYEES SIGNED THE MEMBERSHIP EVIDENCE. THE BOARD FOUND THAT WHILE THE ACTIVITIES OF THE UNION ORGANIZER AND THE COMPANY PRESIDENT MAY HAVE BEEN TOTALLY INNOCENT, SUCH ACTIVITIES "COULD NOT HELP BUT INFLUENCE THE EMPLOYEES". WHILE THE EMPLOYEES WHO SIGNED MEMBERSHIP CARDS WHICH WERE FILED IN SUPPORT OF THE FIRST APPLICATION MAY HAVE BEEN LED TO BELIEVE THAT THE RESPONDENT WISHED

THEM TO SIGN SUCH MEMBERSHIP CARDS, SUCH BELIEF ON THE PART OF THE EMPLOYEES WOULD HAVE BEEN DISSIPATED BY THE FACT THAT THE EMPLOYER ACTIVELY OPPOSED THE UNION'S APPLICATION FOR CERTIFICATION AND CAUSED IT TO BE DISMISSED. THE OPPOSITION TO THE APPLICATION BY THE RESPONDENT AT THE FIRST HEARING WOULD HAVE REMOVED FROM THE EMPLOYEES' MINDS ANY ILLUSION THAT MANAGEMENT SUPPORTED THE APPLICATION AND THE EFFECT OF THE RESPONDENT'S ACTIVITIES IN INTRODUCING THE UNION ORGANIZER TO THE EMPLOYEES WOULD HAVE BEEN DISSOLVED BY THE RESPONDENT'S OPPOSITION TO THE APPLICATION.

3. IN THESE CIRCUMSTANCES, WE FIND THAT SINCE THE APPLICANT IN THIS CASE HAS FILED NEW MEMBERSHIP EVIDENCE AND SINCE THIS IS NOT A SITUATION WHERE THERE ARE TWO TRADE UNIONS COMPETING FOR THE SUPPORT OF THE EMPLOYEES, THERE IS NOTHING BEFORE US WHICH WOULD CAUSE US TO FIND THAT THE INSTANT APPLICATION IS UNTIMELY.

4. MR. W. G. JACKSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE DUTIES AND RESPONSIBILITIES OF RICHARD KRAL, ALFRED SMITH, STANLEY LEWIS AND GUNTER NOESCH.

INDEXED ENDORSEMENT - TERMINATION

15422-68-R: RICHARD TIFFIN, MARY MASON, RONALD MCLEAN, MANUEL CAVACAS, REGINA VROMAN, AND TOM SCHINKELSHOEK, AND OTHERS (APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (RESPONDENT) V. NORTH AMERICAN PLASTICS CO. LTD. (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF H. D. BROWN, VICE-CHAIRMAN: OCTOBER 30, 1969.

1. THE BOARD AUTHORIZED MR. W. J. JACKSON, EXAMINER, TO INQUIRE INTO AND REPORT TO IT ON THE DUTIES AND RESPONSIBILITIES OF RICHARD TIFFIN, ONE OF THE APPLICANTS IN THIS MATTER. THE EXAMINER'S REPORT DATED APRIL 15TH 1969 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO HAVE BEEN CONSIDERED BY THE BOARD.

2. THE EVIDENCE DISCLOSES THAT MR. TIFFIN HAS BEEN EMPLOYED BY THE INTERVENER SINCE MAY 1968, FIRSTLY IN THE MAINTENANCE DEPARTMENT AND THEN AS GROUP LEADER ON THE NIGHT

SHIFT ON THE SECOND FLOOR, AND IS MAINLY CONCERNED WITH THE FLOW OF PRODUCTION IN THE PAINT AND DECORATING DEPARTMENT AND DOES MANUAL WORK HIMSELF. HE DID DRIVE A BUS DURING THE STRIKE AS AN EXTRA JOB AND STARTED AS A GROUP LEADER IN FACT IN SEPTEMBER, AND WAS GIVEN A BUTTON WITH THE WORK "LEADER" ON IT. ALL HOURLY RATED EMPLOYEES HAVE SIMILAR BUTTONS BUT THE FOREMEN DO NOT, AND SOME BUT NOT ALL OF THE SUPERVISORS WEAR A BUTTON. HE WAS THEN JUST TOLD WHAT TO DO. HE STATED THAT HE IS THE ONLY PERSON SUPERVISING ON THE FLOOR DURING HIS SHIFT AS THE FOREMAN LEAVES BEFORE 7:00 P.M. AND DOES INSTRUCT THE OPERATORS ON THE USE OF THE MACHINES WHEN THEY HAVE DIFFICULTIES. HE DISCUSSED HIS OWN RAISE IN PAY WITH HIS FOREMAN. HE CANNOT AUTHORIZE OR RECOMMEND OVERTIME AND HE IS NOT RESPONSIBLE FOR PRODUCTION. HE SAID HIS PRIME FUNCTION WAS TO SEE THAT THE MACHINES ARE PROPERLY OPERATED. HE TAKES DIRECTIONS FROM HIS FOREMAN, CHARLES LEVEILLE, AND DOES NOT HAVE ANY INDEPENDENT AUTHORITY WITH RESPECT TO EITHER THE PRODUCTION OR THE EMPLOYEES IN THAT DEPARTMENT. THE FOREMAN LAYS OUT THE WORK FOR THE DEPARTMENT AND THE EMPLOYEES IN THE GROUP ARE PLACED ON THE MACHINES BY LEVEILLE. ALL ORDERS ARE PASSED BY OR THROUGH HIS FOREMAN, BUT HE MAY TELL AN EMPLOYEE TO DO A CERTAIN SPARE JOB IF THE REGULAR ONE IS FINISHED, AND DOES SHOW EMPLOYEES HOW TO DO A JOB PROPERLY. TIFFIN DOES NOT HAVE THE AUTHORITY TO HIRE, FIRE, TAKE ANY DISCIPLINARY MEASURES, GRANT TIME OFF OR EFFECTIVELY DEAL WITH THE EMPLOYMENT OF OTHERS WITH THE EXCEPTION OF RESPONSIBILITIES OF A REPORTING NATURE TO HIS FOREMAN, WHICH WOULD BE ATTENDANT WITH A TYPE OF LEAD HAND POSITION. HIS INSTRUCTIONS WITH RESPECT TO THE JOB ARE TO CONFER WITH THE FOREMAN, EXCEPT FOR DIFFICULTIES WITH A PARTICULAR PART AT NIGHT WHEN HE WOULD CALL THE QUALITY CONTROL MANAGER. HE HAS ATTENDED MEETINGS WITH MANAGEMENT WITH RESPECT TO CERTAIN INJUNCTION PROCEEDINGS BUT DOES NOT HAVE REGULAR MEETINGS WITH THEM. HE HAS BEEN ASKED BY HIS FOREMAN ABOUT THE PERFORMANCE OF OTHER EMPLOYEES. TIFFIN IS HOURLY RATED AND PUNCHES A TIME CLOCK AND HAS SIMILAR WORKING CONDITIONS WITH THE OTHER EMPLOYEES IN THE DEPARTMENT EXCEPT HE IS PAID FOR $1\frac{1}{2}$ HOURS MORE PER DAY THAN THE OTHERS TO COMPENSATE FOR OVERTIME WORKED. HE IS ENTITLED TO THE INCENTIVE BONUS AS ARE THE OTHERS, AND HAS LOST THIS BONUS ON SEVERAL OCCASIONS. HE DID AGREE THAT HE WAS IN CHARGE OF THE DEPARTMENT WHEN THE FOREMAN WAS NOT THERE. EMPLOYEES HAVE COMPLAINED TO HIM ABOUT THE WORK AND HE HAS PASSED ON SUCH COMPLAINTS TO THE FOREMAN, AND OCCASIONALLY HE HAS CORRECTED EMPLOYEES' WORK OR TOLD THEM SUCH THINGS AS NOT TO SMOKE. HE DOES NOT HAVE AN OFFICE NOR A PARTICULAR AREA IN THE PLANT OF HIS OWN. MRS. DOAN, ONE OF THE

EMPLOYEES IN THE DEPARTMENT AT THE TIME OF THE APPLICATION, TESTIFIED THAT SHE WAS HIRED BY THE FOREMAN AND WHEN SHE MET TIFFIN SHE ASSUMED HE WAS THERE TO TEACH HER HOW TO PAINT AND NOT AS A BOSS. IF ANYTHING WENT WRONG, TIFFIN WOULD CALL THE FOREMAN AND SHE KNEW HE COULD NOT TAKE ANY DISCIPLINARY MEASURES. SHE SAID TIFFIN JUST CARRIED OUT LEVEILLE'S ORDERS.

3. F. M. CORCORAN, ASSISTANT PLANT MANAGER, STATED THAT LEVEILLE WAS IN CHARGE OF THE DECORATING DEPARTMENT AND HAS NO ONE ELSE WITH HIM THAT HAD MANAGERIAL AUTHORITY. HE GAVE ORDERS TO LEVEILLE WHOSE RESPONSIBILITY WAS TO IMPLEMENT THEM. HE CONFIRMED THAT TIFFIN IS UNDER THE FOREMAN'S DIRECTION AND HIS DUTIES WERE TO KEEP THE MACHINES OPERATING, TO KEEP THEM SUPPLIED WITH PAINT AND WITH MATERIAL. HE IS CLASSIFIED AS A WORKER NOT A SUPERVISOR. HE ALSO ADVISED THAT THERE WAS A CONSIDERABLE DIFFERENCE IN THE PAY OF LEVEILLE AND TIFFIN, AND THE LATTER HAD NO AUTHORITY TO DISCIPLINE, GRANT TIME OFF OR SCHEDULE OVERTIME. TIFFIN IS SUBJECT TO DISCIPLINE BY LEVEILLE. HE HAS NO AUTHORITY TO MAKE EXECUTIVE DECISIONS DURING THE NIGHT SHIFT AND MUST CALL LEVEILLE FOR INSTRUCTIONS. THERE ARE MANAGEMENT MEETINGS WHICH LEVEILLE ATTENDS BUT TIFFIN DOES NOT. TIFFIN IS ONLY A LEADER. THE EXTRA $1\frac{1}{2}$ HOURS PAY COVERED THE TIME THAT HE IS REQUIRED TO CLEAN UP BUT HE WOULD NOT BE PAID FOR IT IF THE TIME WAS NOT NECESSARY AND WOULD BE PAID FOR ANY WORK OVER THAT TIME IF JUSTIFIED. CORCORAN DID NOT PREPARE THE LIST OF EMPLOYEES USED IN THIS APPLICATION BUT AFTER DISCUSSING SAME WITH THE PLANT MANAGER ASSURED THAT THE DESIGNATION OF TIFFIN AS A SUPERVISOR ON THE LIST WAS AN ERROR OR MISPRINT. HE SAID IT WOULD BE MORE ACCURATE TO SAY THAT LEVEILLE HELD TIFFIN ACCOUNTABLE FOR CARRYING OUT ORDERS ON PRODUCTION RATHER THAN TIFFIN BEING ACCOUNTABLE FOR PRODUCTION. TIFFIN HAS NEVER HELD A POSITION OF A SUPERVISOR.

4. WHILE TIFFIN ADMITTED THAT HE HAD TAKEN AN AFFIDAVIT FOR USE IN A PROCEEDING IN COURT WHEREIN HE STATED HE WAS A SUPERVISOR (THE AFFIDAVIT WAS FILED AS AN EXHIBIT IN THIS MATTER) HE EXPLAINED TO THE EXAMINER THAT HE DID NOT MEAN THAT HE WAS IN THE SAME CLASS AS HIS FOREMAN, AND AT THAT TIME THERE WERE NO CLASSIFICATIONS IN THE PLANT AND "SUPERVISOR" MEANS THE SAME AS "LEADER" NOW. HE DID NOT, HOWEVER, DISTINGUISH HIS CAPACITY FROM THE OTHERS TO WHOM HE REFERRED AS "SUPERVISOR". WHATEVER HE DID MEAN BY SO DENOTING HIMSELF, THE BOARD MUST LOOK TO THE OBJECTIVE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT TO DETERMINE WHETHER

THE EMPLOYEE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT. THE FACT THAT TIFFIN HELD HIMSELF OUT TO OTHERS AS BEING A SUPERVISOR OR THAT OTHER EMPLOYEES CALL HIM A SUPERVISOR DOES NOT BY ITSELF QUALIFY HIM FOR SUCH A POSITION. WE CAN AGREE THAT BY HIM SO DOING IT MAY LEAD OTHERS TO WRONG CONCLUSIONS CONCERNING HIS EMPLOYMENT BUT IN A VERY BROAD SENSE HIS JOB, IN THE SAME MANNER AS THE USUAL LEAD HAND'S JOB, HAS SOME SUPERVISORY CHARACTERISTICS ATTACHED TO IT. FROM THE BOARD'S POINT OF VIEW, HOWEVER, HE IS NOT A SUPERVISOR WITH MANAGEMENT FUNCTIONS IN THE SENSE THAT HE DOES NOT EXERCISE THE USUAL DUTIES AND RESPONSIBILITIES NORMALLY ATTRIBUTED TO MEMBERS OF MANAGEMENT BUT HIS STATEMENTS IN HIS AFFIDAVIT, REFERRED TO ABOVE, WHILE PERHAPS MISLEADING AND PERHAPS MADE WITH THE INTENTION TO MISLEAD, ALTHOUGH WE MAKE NO FINDING IN THIS REGARD, ARE NOT ENTIRELY WITHOUT SUBSTANCE. WE ARE NOT PREPARED TO DISCREDIT HIS EVIDENCE CONTAINED IN THE EXAMINER'S REPORT ON THE BASIS OF THOSE AFFIDAVITS, AS THE RESPONDENT SUBMITTED WE SHOULD.

5. I HAVE CAREFULLY CONSIDERED ALL OF THE EVIDENCE SET OUT IN THE REPORT OF THE EXAMINER, PARTS OF WHICH ARE SET OUT ABOVE AND THE REPRESENTATIONS OF THE PARTIES, AND HAVING REGARD TO TIFFIN'S ACTUAL DUTIES AND RESPONSIBILITIES IN THE PLANT EVEN THOUGH HE MAY HAVE PUFFED THEM UP SOMEWHAT FOR HIS OWN REASONS, USING THE BOARD'S USUAL CRITERIA FOR THE DETERMINATION OF SUCH ISSUES I FIND THAT RICHARD TIFFIN DOES NOT EXERCISE MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD AUTHORIZED MR. J. R. HENDERSON TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF FOURTEEN EMPLOYEES OF THE RESPONDENT, HOWEVER, THE RESPONDENT WITHDREW ITS CHALLENGE TO TWO OF THE FOURTEEN NAMED EMPLOYEES AND THE EXAMINER COMPLETED HIS REPORT RELATING TO THE REMAINING TWELVE. THE BOARD HAS CONSIDERED THE EVIDENCE IN THE EXAMINER'S REPORT DATED JULY 17TH 1969 AND THE WRITTEN REPRESENTATIONS OF THE PARTIES RECEIVED BY THE BOARD RELATING THERETO. THE BOARD HAS, IN ARRIVING AT ITS DECISION, HAD REFERENCE TO THE PRINCIPLES ENUNCIATED IN THE FALCONBRIDGE NICKEL MINES CASE, OLRB MONTHLY REPORT 1966, PAGE 379.

7. ON THE BASIS OF ALL THE EVIDENCE I FIND THAT CHARLES MASEFIELD, NORMAN RAE, JEAN WILLSIE, JAMES HANDSOR, BARRY LAMPERD, LOUISE GALVACK, JAMES RIEDL DO NOT EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EMPLOYEES OF THE INTERVENER INCLUDED IN THE BARGAINING UNIT.

8. I FURTHER FIND THAT DICK RICHIE, VICTOR BROWN, STEVE BUJAKI, KEN BUCK AND KURT LAKE DO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE THEREFORE NOT INCLUDED IN THE BARGAINING UNIT.

9. AT THE CONTINUED HEARING IN THIS MATTER SCHEDULED FOR NOVEMBER 19TH, 20TH AND 21ST AT CHATHAM, THE BOARD WILL INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE PETITION FILED IN SUPPORT OF THIS APPLICATION; I.E. WHETHER THE PETITION REPRESENTS THE VOLUNTARY DESIRES OF THE EMPLOYEES CONCERNED AND THE CHARGES FILED BY THE RESPONDENT RELATING THERETO.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: OCTOBER 30, 1969.

1. I AM NOT IN DISAGREEMENT WITH THE DECISION OF THE VICE-CHAIRMAN EXCEPT INSOFAR AS IT EXCLUDES DICK RICHIE, VICTOR BROWN, STEVE BUJAKI, KEN BUCK, AND KURT LAKE FROM THE BARGAINING UNIT AS BEING MANAGERIAL WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

2. FROM A READING OF THE EXAMINER'S REPORT, I WOULD FIND THAT THERE ARE SUCH SIMILARITIES OF INDICIA BETWEEN THE AFOREMENTIONED PERSONS AND THOSE WHO WERE INCLUDED IN THE UNIT, THAT I AM UNABLE TO DIFFERENTIATE BETWEEN SUCH PERSONS IN ORDER TO EXCLUDE THEM FROM THE BARGAINING UNIT.

3. ACCORDINGLY I AM OF THE OPINION, AND WOULD SO FIND, THAT DICK RICHIE, VICTOR BROWN, STEVE BUJAKI, KEN BUCK AND KURT LAKE SHOULD BE INCLUDED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: OCTOBER 30, 1969.

1. I AM IN ACCORD WITH THE DECISION OF H. D. BROWN, VICE-CHAIRMAN, EXCEPT FOR THE INCLUSION OF RICHARD TIFFIN IN THE BARGAINING UNIT. AFTER A CAREFUL REVIEW OF ALL OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT INCLUDING PARTICULARLY EXHIBITS 1, 2 AND 3, I CAN ARRIVE AT NO OTHER CONCLUSION BUT THAT RICHARD TIFFIN EXERCISES MANAGERIAL FUNCTIONS, AND AS SUCH SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

2. THE BOARD HAS KNOWLEDGE OF THE BACKGROUND TO THE INSTANT APPLICATION BY WAY OF THE MATTERS CONTAINED IN THE EXAMINER'S REPORT AND IN THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES IN THE HEARING IN THIS APPLICATION, TO THE EFFECT THAT THE PARTIES INVOLVED IN THIS APPLICATION FOR TERMINATION OF BARGAINING RIGHTS ARE LOCKED IN A BITTER INDUSTRIAL CONFLICT.

3. THE EVIDENCE HAS ESTABLISHED THAT RICHARD TIFFIN IS A LEADING FIGURE IN THIS ACTION TO HAVE THE RESPONDENT UNION DECERTIFIED; HE IS ALSO A LEADING FIGURE IN ASSISTING THE INTERVENER COMPANY IN THEIR EFFORTS TO CONTINUE TO OPERATE THEIR BUSINESS DURING THE COURSE OF THE RESPONDENT UNION'S PRESENT LEGAL STRIKE.

4. RICHARD TIFFIN WAS HIRED AFTER THE LEGAL STRIKE BEGAN. THE EVIDENCE DISCLOSES THAT HE PERFORMED MANAGERIAL DUTIES FROM THE START OF HIS EMPLOYMENT. FROM THE BEGINNING OF HIS EMPLOYMENT HE HAS TAKEN HIS POSITION ON THE SIDE OF THE INTERVENER COMPANY, EVEN TO THE EXTENT OF PERFORMING THE DIFFICULT TASK OF DRIVING A BUS CONTAINING NON-STRIKING EMPLOYEES THROUGH THE LEGAL PICKET LINE SET UP BY THE UNION OUTSIDE THE PLANT.

5. RICHARD TIFFIN IS THE FIRST NAMED APPLICANT TO THE INSTANT APPLICATION FOR TERMINATION OF THE RESPONDENT UNION'S BARGAINING RIGHTS. TO BE SUCCESSFUL IN THIS APPLICATION HE WOULD HAVE TO ESTABLISH THAT HE DOES NOT EXERCISE MANAGERIAL DUTIES.

6. RUNNING THROUGH THE EXAMINER'S REPORT IS A MORE THAN OBVIOUS EFFORT BY A GREAT MANY OF THE WITNESSES CALLED BY THE APPLICANTS TO DOWNGRADE THE AUTHORITY AND MANAGERIAL FUNCTIONS AND TITLE OF RICHARD TIFFIN. TIFFIN, TOGETHER WITH THE OTHER WITNESSES, ATTEMPTS THROUGH EVIDENCE TO ESTABLISH THAT FOR A PERIOD OF TIME HE PLAYED THE PART OF A COURT JESTER OR TOWN FOOL IN CLAIMING THE AUTHORITY AND TITLE OF SUPERVISOR WITH MANAGERIAL RESPONSIBILITIES. WITH THE EXCEPTION OF EXHIBITS 1, 2 AND 3, THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT IS UNSWORN EVIDENCE. CONTAINED WITHIN THE REPORT ARE THREE EXHIBITS WHICH HAVE A CRUCIAL BEARING ON MY DECISION. THESE EXHIBITS CONTAIN THE ONLY SWORN TESTIMONY OF RICHARD TIFFIN WHEN HE WAS INVOLVED IN CERTAIN COURT ACTIONS. THE EXHIBITS CONTAIN EVIDENCE TO THE FOLLOWING EFFECT:

EXHIBIT 1, DATED AUGUST 13TH, 1968 - AFFIDAVIT IN THE SUPREME COURT OF ONTARIO, CONTAINS EVIDENCE TO THE EFFECT THAT HE IS "EMPLOYED AS A SUPERVISOR WITH THE PLAINTIFF COMPANY AND AS SUCH HAVE KNOWLEDGE OF THE MATTERS HEREIN DEPOSED TO." (UNDERLINING MINE).

EXHIBIT 3, EVIDENCE TAKEN BEFORE E.H.A. CARSON, MAGISTRATE FOR THE COUNTY OF KENT, DATED SEPTEMBER 23RD, 1968 WHEREIN THE FOLLOWING APPEARS:

Q. AND YOU ARE DRIVING EVERY DAY, OR YOU WERE, STRIKE BREAKERS IN AND OUT OF THE PLANT?

A.(TIFFIN) YES, SIR. THOSE WERE PEOPLE THAT WERE WORKING FOR ME.

Q. PEOPLE WORKING FOR WHO?

A.(TIFFIN) FOR ME. I SUPERVISE THE SECOND FLOOR.

Q. YOU SUPERVISE THE SECOND FLOOR?

A.(TIFFIN) AND MOST OF THOSE GIRLS WORK ON THE SECOND FLOOR. I WAS VERY CONCERNED WITH THEIR SAFETY, BRINGING THEM IN AND OUT OF THE PLANT. (THE NAME 'TIFFIN' IN BRACKETS MINE).

FURTHER IN HIS EVIDENCE HE STATED THAT HE HELD A MANAGEMENT POSITION, AND THAT HIS TITLE WAS SUPERVISOR.

EXHIBIT 2, DATED OCTOBER 18TH, 1968 BEFORE
MAGISTRATE E.H.A. CARSON:-

Q. WHAT IS YOUR OCCUPATION?

A.(TIFFIN) SUPERVISOR, NORTH AMERICAN PLASTICS.

FURTHER IN HIS EVIDENCE HE STATED THAT WHEN HE WAS RETURNING IN AN ALMOST EMPTY BUS HE "HAD TWO OTHER SUPERVISORS WITH ME." THESE WERE, ACCORDING TO HIS EVIDENCE, CHARLES LEVEILLE AND PETER HERRMAN WHO WE KNOW TO BE SUPERVISORS EXCLUDED FROM THE BARGAINING UNIT.

7. IN THE FOREGOING SWORN EVIDENCE WE HAVE RICHARD TIFFIN TESTIFYING THAT FROM THE PERIOD AUGUST 13TH, 1968 TO OCTOBER 18TH, 1968 THAT HE RICHARD TIFFIN WAS A SUPERVISOR, DID HOLD A MANAGEMENT POSITION, AND DID HOLD HIMSELF OUT TO BE EQUAL IN MANAGERIAL STATUS WITH TWO OTHER SUPERVISORS WHO ARE EXCLUDED FROM THE BARGAINING UNIT.

8. IN THE DECISION OF THE VICE-CHAIRMAN, H. D. BROWN, REFERENCE IS MADE TO THE FOLLOWING:-

"FROM THE BOARD'S POINT OF VIEW, HOWEVER, HE IS NOT A SUPERVISOR WITH MANAGEMENT FUNCTIONS IN THE SENSE THAT HE DOES NOT EXERCISE THE USUAL DUTIES AND RESPONSIBILITIES NORMALLY ATTRIBUTED TO MEMBERS OF MANAGEMENT BUT HIS STATEMENTS IN HIS AFFIDAVIT REFERRED TO ABOVE WHILE PERHAPS MISLEADING AND PERHAPS WITH THE INTENTION TO MISLEAD, ALTHOUGH WE CAN MAKE NO FINDING IN THIS REGARD, ARE NOT ENTIRELY WITHOUT SUBSTANCE. WE ARE NOT PREPARED TO DISCREDIT HIS EVIDENCE CONTAINED IN THE EXAMINER'S REPORT ON THE BASIS OF THOSE AFFIDAVITS, AS THE RESPONDENT SUBMITTED WE SHOULD. (UNDERLINING MINE)

FURTHER IN PARAGRAPH 5 OF THE VICE-CHAIRMAN'S DECISION REFERENCE IS MADE TO THE POSSIBILITY THAT TIFFIN MAY HAVE PUFFED UP HIS DUTIES AND RESPONSIBILITIES AT TIMES FOR HIS OWN REASONS.

9. ON CAREFUL REVIEW OF THE TOTAL EVIDENCE OF TIFFIN, I CAN ONLY CONCLUDE THAT NO PART OF HIS EVIDENCE CAN BE RELIED ON. IF HE CAN PUFF UP HIS DUTIES AND RESPONSIBILITIES TO SUIT HIS PURPOSE "WHILE PERHAPS MISLEADING AND PERHAPS WITH THE INTENTION TO MISLEAD" IN A COURT OF LAW, IN A PROCEEDING WITH CRIMINAL OVERTONES TO SUIT HIS PURPOSE AT THAT TIME, WHY WOULD HE NOT NOW IN UNSWORN EVIDENCE DEFLATE HIS DUTIES AND RESPONSIBILITIES TO SUIT HIS PURPOSE IN THE INSTANT APPLICATION.

10. TIFFIN NOW TESTIFIES THAT HE REALLY WAS NOT CLASSIFIED AS A SUPERVISOR IN THE PERIOD COVERED BY HIS ACTIVITIES IN THE COURTS. FURTHER EVIDENCE TO SUPPORT THIS NEW POSITION WAS GIVEN BY F. M. CORCORAN, ASSISTANT PLANT MANAGER, TO THE EFFECT THAT HE (CORCORAN) DID NOT PREPARE THE LIST OF EMPLOYEES USED IN THE INSTANT APPLICATION, AND SO COULD NOT BE HELD RESPONSIBLE FOR THE DESIGNATION 'SUPERVISOR' GIVEN TO MR. TIFFIN IN DECEMBER 1968, WHICH APPEARS IN THE COMPANY'S LIST OF EMPLOYEES SENT TO THE BOARD. THE EXCUSE THAT THIS ALL IMPORTANT DESIGNATION WAS AN ERROR OR MISPRINT ON THE PART OF THE COMPANY PERSON WHO UNDERTOOK TO FILE THIS INFORMATION WITH THE BOARD IS UNACCEPTABLE.

11. FROM AUGUST TO OCTOBER 1968 TIFFIN CLAIMS UNDER OATH HE IS DESIGNATED A SUPERVISOR; IN DECEMBER 1968 TIFFIN APPEARS ON THE LIST OF EMPLOYEES SENT TO THE BOARD BY THE COMPANY AS A SUPERVISOR. THIS CANNOT BE EXPLAINED AWAY IN THE FIRST PLACE BY TIFFIN PUFFING UP HIS TITLE, AND IN THE SECOND PLACE BY THE COMPANY CLAIMING IT WAS EITHER AN ERROR OR A MISPRINT.

12. IN EXHIBIT 1 THE INTERVENER COMPANY WAS THE PLAINTIFF IN THE ACTION IN THE SUPREME COURT OF ONTARIO, AND IN THE AFFIDAVIT TIFFIN THEN CLAIMED HE WAS A SUPERVISOR. ARE WE EXPECTED TO BELIEVE THAT THE PLAINTIFF STOOD IDLY BY IN THIS SERIOUS ACTION BROUGHT BY THEMSELVES AND ALLOWED ONE OF THEIR EMPLOYEES TO CLAIM THAT HE WAS A SUPERVISOR AND, AS SUCH, SPEAK ON THEIR BEHALF?

13. THERE IS A SERIOUS QUESTION OF CREDIBILITY IN TIFFIN'S EVIDENCE BEFORE THE COURTS, OR IN HIS UNSWORN EVIDENCE BEFORE OUR EXAMINER. HE APPEARS TO BE THE KIND OF WITNESS THAT CAN TESTIFY TO ANYTHING TO SUIT THE CIRCUMSTANCES OF THE MOMENT.

14. A DECISION HAS TO BE MADE IN THIS MATTER, AND FOR THE PURPOSE OF THAT DECISION I ACCEPT HIS SWORN EVIDENCE AS CONTAINED IN EXHIBITS 1, 2 AND 3, AND FIND THAT HE EXERCISES MANAGERIAL FUNCTIONS AND, THEREFORE, I WOULD EXCLUDE HIM FROM THE BARGAINING UNIT.

INDEXED ENDORSEMENTS - PROSECUTION

16471-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MIDDLESEX COUNTY BOARD OF EDUCATION AND P. W. TURK (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: J. B. WATERMAN, E. PARKER
FOR THE APPLICANT; RONALD W. DICKIE FOR THE RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
E. BOYER: OCTOBER 30, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR THE ALLEGED VIOLATION BY THE RESPONDENT OF SECTIONS 48 AND 50(c) OF THE LABOUR RELATIONS ACT, R.S.O. 1960 C 202. HAVING REGARD TO THE EVIDENCE AND TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE, WE FIND THAT THERE ARE ISSUES OF LAW AND FACT THAT HAVE BEEN RAISED WHICH MIGHT PROPERLY BE DETERMINED BY A MAGISTRATE. TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC v. HANES OF CANADA LIMITED, 1969 JULY OLRB MTHLY. REP. 541. WE THEREFORE CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT THAT IT ALLEGEDLY DID VIOLATE SECTION 48 AND SECTION 50(c) OF THE LABOUR RELATIONS ACT. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: OCTOBER 30, 1969.

I DISSENT.

SECTION 48 OF THE LABOUR RELATIONS ACT PROVIDES AS
FOLLOWS:-

"NO EMPLOYER OR EMPLOYERS' ORGANIZATION
AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER
OR AN EMPLOYERS' ORGANIZATION SHALL PARTICI-
PATE IN OR INTERFERE WITH THE FORMATION,
SELECTION OR ADMINISTRATION OF A TRADE UNION
OR THE REPRESENTATION OF EMPLOYEES BY A TRADE
UNION OR CONTRIBUTE FINANCIAL OR OTHER
SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS
SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER
OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG
AS HE DOES NOT USE COERCION, INTIMIDATION,
THREATS, PROMISES OR UNDUE INFLUENCE.
R.S.O. 1960, c. 202, s. 48."

THE ONLY QUESTION ARISING IN THIS APPLICATION IS
WHETHER THE LETTER COMPLAINED OF INVOLVED THE USE OF COERCION,
INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

EVEN THOUGH THE APPLICANT NEED ONLY PROVE A PRIMA
FACIE CASE OF AN ALLEGED VIOLATION, UNDER THE POLICY OF THE
BOARD, FOR IT TO GRANT CONSENT, I WOULD FIND THAT THE EMPLOYER
HAS NOT, IN ANY WAY, VIOLATED THE PROVISIONS OF SECTION 48, NOR
HAS THE APPLICANT MADE OUT A CASE FOR THE GRANTING OF CONSENT
TO THE INSTITUTION OF A PROSECUTION.

HAVING REGARD TO SUCH PREVIOUS CASES OF THE BOARD
AS TAMBLYN-PRITCHARD CONSTRUCTION LIMITED CASE, JUNE 1967
MONTHLY REPORT, 282, COOPER-WEEKS' LIMITED CASE, MAY 1967
MONTHLY REPORTS 162, AND FORMFIT INTERNATIONAL S.A. CASE, JUNE
1966 MONTHLY REPORTS 193, I HAVE ABSOLUTELY NO HESITATION IN
DISMISSING THIS APPLICATION.

16702-69-U: RAPID TYPESETTING COMPANY LIMITED (APPLICANT) V.
TORONTO TYPOGRAPHICAL UNION NUMBER 91 (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: HENRY SIEGAL, Q.C., AND SAM
GOLDBERG FOR THE APPLICANT, J. A. RYDER, K. E. PEATLING AND
T. W. WILDE FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 2, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST TORONTO TYPOGRAPHICAL UNION NUMBER 91. AT THE HEARING IN THIS MATTER THE APPLICANT RESTRICTED ITS APPLICATION TO AN ALLEGATION THAT THE RESPONDENT HAD COMMITTED AN ACT CONTRARY TO THE PROVISIONS OF SECTION 57(1) OF THE LABOUR RELATIONS ACT.

2. SECTION 57(1) OF THE ACT READS AS FOLLOWS:

NO PERSON SHALL DO ANY ACT IF HE KNOWS OR OUGHT TO KNOW THAT, AS A PROBABLE AND REASONABLE CONSEQUENCE OF THE ACT, ANOTHER PERSON OR PERSONS WILL ENGAGE IN AN UNLAWFUL STRIKE OR AN UNLAWFUL LOCK-OUT.

3. THE PROVISIONS OF SECTION 57(1) ARE RESTRICTED TO ACTIVITIES OF A "PERSON". THERE IS NO DEFINITION OF THE TERM "PERSON" CONTAINED IN THE LABOUR RELATIONS ACT. HOWEVER, OTHER PROVISIONS OF THE ACT DISTINGUISH BETWEEN THE TERM "PERSON" AND THE TERM "TRADE UNION", E.G. SECTION 52 OF THE ACT READS IN PART, "NO PERSON, TRADE UNION OR EMPLOYERS' ORGANIZATION SHALL. . . ." WHILE IT IS NOTED THAT THE BOARD'S RULES OF PROCEDURE DEFINES "PERSON" AS INCLUDING A TRADE UNION, SUCH DEFINITION IS ONLY APPLICABLE TO THE BOARD'S RULES OF PROCEDURE. THE BOARD'S RULES DO NOT AND CANNOT ALTER OR AMEND THE PROVISIONS OF THE LABOUR RELATIONS ACT.

4. IN THE ABSENCE OF A DEFINITION IN THE LABOUR RELATIONS ACT OF THE WORD "PERSON" WHICH WOULD INCLUDE A TRADE UNION, AND IN VIEW OF THE FACT THAT THE ACT ITSELF DISTINGUISHES BETWEEN THE TERM "PERSON" AND THE TERM "TRADE UNION", WE FIND THAT UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT, A TRADE UNION IS NOT A PERSON FOR THE PURPOSE OF INTERPRETING THAT ACT. IF WE WERE TO FIND OTHERWISE WE WOULD HAVE TO ACCORDINGLY FIND THAT THE USE OF THE TERM "PERSON" AND THE TERM "TRADE UNION" IN THE SAME SECTION, SUCH AS SECTION 52, WOULD BE A REDUNDANCY. THIS WE ARE NOT PREPARED TO FIND.

5. WE ACCORDINGLY FIND THAT THE PROVISIONS OF SECTION 57 DO NOT APPLY TO A TRADE UNION SINCE SECTION 57 IS RESTRICTED TO A PROHIBITION AGAINST A PERSON RATHER THAN A TRADE UNION.

6. THE EVIDENCE IN THIS CASE INDICATED THAT AN OFFICER OF THE RESPONDENT DID CERTAIN THINGS WHICH MAY HAVE BEEN CONTRARY TO PROVISIONS OF THE LABOUR RELATIONS ACT. THE ACTIONS

OF SUCH OFFICER WOULD, PURSUANT TO THE PROVISIONS OF SECTION 72(2), BE DEEMD TO BE THE ACTIONS OF THE UNION. WHILE SUCH ACTIONS MAY BE CONSIDERED TO BE AN OFFENCE COMMITTED BY THE UNION UNDER SOME SECTIONS OF THE LABOUR RELATIONS ACT, IN VIEW OF THE FACT THAT THIS APPLICATION WAS RESTRICTED TO AN ALLEGATION OF A BREACH OF SECTION 57 OF THE ACT, THE TRADE UNION CANNOT BE SAID TO HAVE BREACHED SECTION 57 SINCE SECTION 57 DOES NOT PERTAIN TO TRADE UNIONS BUT ONLY PERTAINS TO PERSONS.

7. FOR THE REASONS SET OUT ABOVE, THE APPLICATION FOR CONSENT TO PROSECUTE FOR AN ALLEGED BREACH OF SECTION 57 BY THE RESPONDENT UNION IS THEREFORE DISMISSED.

16713-69-U: HANK BROUWER CONSTRUCTION LIMITED AND THE
CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANTS) V.
WALTER T. CROSBIE AND WILFRED HAGUE (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: W.I.C. BINNIE AND H. BROUWER FOR THE APPLICANTS, L. A. MACLEAN FOR THE RESPONDENTS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: OCTOBER 28, 1969.

1. THE APPLICANTS ARE APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR ALLEGED VIOLATIONS OF SECTIONS 55 AND 57 OF THE LABOUR RELATIONS ACT.

2. THE MATERIAL FACTS UPON WHICH THE APPLICANTS RELY IN SUPPORT OF THEIR ALLEGATIONS ARE AS FOLLOWS: THE RESPONDENTS WALTER T. CROSBIE AND WILFRED HAGUE ARE BUSINESS AGENTS OF LOCAL 38 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. ON OR ABOUT MAY 3, 1968, THE APPLICANT TRADE UNION WAS CERTIFIED AS BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. ON OR ABOUT JUNE 14, 1968, A COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE APPLICANT COMPANY AND THE APPLICANT TRADE UNION WHICH REMAINED IN EFFECT AT ALL TIMES MATERIAL TO THESE PROCEEDINGS. ON OR ABOUT MAY 13, 1969, THE APPLICANT COMPANY OBTAINED A CONTRACT FROM TAMBLYN-PRITCHARD-JOHNSTON CONSTRUCTION LIMITED TO PERFORM CARPENTRY WORK AT A "RED BARN" RESTAURANT BEING CONSTRUCTED IN ST.

CATHARINES. OTHER UNION SUB-TRADES ON THIS PROJECT AT ALL MATERIAL TIMES INCLUDED MYLES ELECTRICAL CONTRACTORS LIMITED, HESSEY PLUMBING AND HEATING CONTRACTORS LIMITED AND MEL ROMANAN MASONRY CONTRACTORS LIMITED. THE APPLICANT COMPANY BEGAN WORK ON THE PROJECT ON OR ABOUT MAY 28, 1969, BUT ON OR ABOUT MAY 29, 1969, THE RESPONDENT WILFRED HAGUE THREATENED TAMBLYN-PRITCHARD-JOHNSTON CONSTRUCTION LIMITED WITH AN UNLAWFUL STRIKE UNLESS THE APPLICANT COMPANY WAS PUT OFF THE JOB. THE APPLICANT COMPANY AND ITS EMPLOYEES, WHO WERE MEMBERS OF THE APPLICANT TRADE UNION, CONTINUED TO WORK ON THE JOB. ON OR ABOUT JUNE 3, 1969, AT APPROXIMATELY 3:10 IN THE AFTERNOON THE RESPONDENT WALTER T. CROSBIE ARRIVED AT THE JOB WITH FOUR OTHER MEN CARRYING SIGNS CLAIMING THAT "THIS JOB IS UNFAIR TO CARPENTERS OF LOCAL 38" AND "APPROVED BY THE LOCAL BUILDING TRADES COUNCIL". AT NO MATERIAL TIME DID LOCAL 38 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA HAVE ANY COLLECTIVE AGREEMENT OR OTHER BARGAINING RELATIONSHIP WITH ANY EMPLOYER RELEVANT TO THIS PROJECT. ON WEDNESDAY, JUNE 4TH, 1969, THE PICKET LINE WAS AGAIN PRESENT AT THE JOB SITE AND INCLUDED THE RESPONDENTS WALTER T. CROSBIE AND WILFRED HAGUE. EMPLOYEES OF THE SUB-CONTRACTORS MYLES ELECTRICAL CONTRACTORS LIMITED, HESSEY PLUMBING AND HEATING CONTRACTORS LIMITED AND MEL ROMANAN MASONRY CONTRACTORS LIMITED REFUSED TO CROSS THE PICKET LINE AND AN UNLAWFUL STRIKE ENSUED. AT NO TIME DID THE EMPLOYEES OF THE APPLICANT COMPANY CEASE TO WORK AS A RESULT OF THE PICKET LINE REFERRED TO ABOVE. AS A RESULT OF THE PICKETING, HOWEVER, TAMBLYN-PRITCHARD-JOHNSTON CONSTRUCTION LIMITED TERMINATED ITS CONTRACT WITH THE APPLICANT COMPANY WHICH IN TURN CAUSED THE APPLICANT COMPANY TO SUFFER FINANCIAL LOSS.

3. THE APPLICANTS ALLEGE THAT THE RESPONDENTS, BEING OFFICERS OF LOCAL 38 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, IN ARRANGING FOR AND APPEARING ON THE SAID PICKET LINE, KNOWING THAT AS A REASONABLE AND PROBABLE CONSEQUENCE THEREOF OTHER PERSONS WOULD ENGAGE IN AN UNLAWFUL STRIKE, DID IN FACT COUNSEL, PROCURE, ENCOURAGE AND SUPPORT AN UNLAWFUL STRIKE CONTRARY TO SECTIONS 55 AND 57 OF THE LABOUR RELATIONS ACT.

4. AT THE OUTSET OF THE HEARING, THE CHAIRMAN POINTED OUT THAT NONE OF THE EMPLOYEES OF THE APPLICANT COMPANY HAD ENGAGED IN A WORK STOPPAGE AS A RESULT OF THE ALLEGED ACTIVITIES OF THE RESPONDENTS. THE CHAIRMAN STATED THAT, IN THE PAST, IN THE EXERCISE OF ITS DISCRETION, THE BOARD HAD DECLINED TO GRANT LEAVE TO PROSECUTE IN CIRCUMSTANCES SIMILAR TO THOSE ALLEGED BY THE APPLICANTS. THAT IS TO SAY, THE PRACTICE OF THE BOARD HAS BEEN TO REFUSE TO GRANT LEAVE TO PROSECUTE IN THE ABSENCE OF AN ACTUAL DISRUPTION IN THE EMPLOYMENT RELATIONSHIP BETWEEN AN APPLICANT EMPLOYER AND HIS EMPLOYEES.

5. IT WAS AGREED BY THE PARTIES THAT FOR THE PURPOSE OF MAKING A DETERMINATION ON THE ABOVE ISSUE, THE BOARD WOULD ASSUME FOR PURPOSES OF ARGUMENT THAT THE APPLICANTS HAD ESTABLISHED IN EVIDENCE THE MATERIAL FACTS UPON WHICH THEY RELY.

6. COUNSEL FOR THE APPLICANTS SUBMITS THAT SINCE THE APPLICANT COMPANY SUFFERED DAMAGES AS A RESULT OF THE ACTIVITIES OF THE RESPONDENTS THAT THE BOARD IN THE EXERCISE OF ITS DISCRETION, SHOULD GRANT LEAVE TO PROSECUTE PROVIDED THAT THE APPLICANT IS ABLE TO SUBSTANTIATE, IN EVIDENCE, THE MATERIAL FACTS UPON WHICH IT RELIES. COUNSEL NOTED THAT IN THE KING SHOPPING PLAZA (LONDON) LIMITED CASE OLRB M.R. MAY 1963 P. 115, WHERE THE BOARD REFUSED CONSENT TO PROSECUTE UNDER SECTIONS 55 AND 57 OF THE ACT, AND IN THE WINDSOR CONSTRUCTION ASSOCIATION CASE OLRB M.R. MAY 1969 P. 234, WHERE THE BOARD REFUSED TO DECLARE A STRIKE UNLAWFUL, IN BOTH INSTANCES BECAUSE THERE WAS NO DISRUPTION OF THE EMPLOYMENT RELATIONSHIP, THERE WAS NO FINDING OF FACT THAT THE APPLICANTS HAD SUFFERED SPECIAL ECONOMIC DAMAGE AS A DIRECT, FORESEEABLE RESULT OF UNLAWFUL STRIKE ACTIVITY. BECAUSE OF THIS ADDITIONAL FACT IN THE INSTANT CASE, COUNSEL ARGUES THAT THE BOARD SHOULD IN THE EXERCISE OF ITS DISCRETION, GRANT THE LEAVE TO PROSECUTE WHICH THE APPLICANTS ARE SEEKING. BY WAY OF ANALOGY, COUNSEL CITED THE DECISION OF THE SUPREME COURT OF CANADA IN THE CASE OF CANADA PAPER Co. v. BROWN (1922) 63 SCR 243. IN THAT CASE, THE PLAINTIFF SOUGHT DAMAGES AS A RESULT OF FUMES FROM A PULP MILL MAKING HIS PROPERTY USELESS FOR THE PURPOSE OF WHICH HE HELD IT. THE COURT UPHELD HIS RIGHT TO INSTITUTE THE ACTION ON THE GROUND THAT HE SUFFERED AN INJURY SUFFICIENTLY DISTINCT IN CHARACTER TO WARRANT HIS MAINTAINING THE ACTION.

7. COUNSEL FOR THE RESPONDENTS SUBMITS THAT SINCE THE EMPLOYEES OF THE APPLICANT COMPANY CONTINUED TO WORK AT ALL RELEVANT TIMES THE BOARD SHOULD ADHERE TO ITS ESTABLISHED POLICY. COUNSEL ARGUES THAT THE FACT THAT THE APPLICANT COMPANY SUFFERED DAMAGES IS NOT SUFFICIENT TO WARRANT THE BOARD DEPARTING FROM THAT POLICY. IN SUPPORT OF HIS POSITION COUNSEL CITED THE KING SHOPPING PLAZA (LONDON) LIMITED CASE (SUPRA); PIGOTT CONSTRUCTION COMPANY LIMITED CASE OLRB M.R. MARCH 1960 P. 425; A. L. WATSON LIMITED CASE OLRB M.R. SEPT. 1965 P. 436; WINDSOR CONSTRUCTION ASSOCIATION CASE (SUPRA).

8. IN THE KING SHOPPING PLAZA (LONDON) LIMITED CASE, ALTHOUGH NO SPECIFIC FINDING WAS MADE THAT THE APPLICANT COMPANY SUFFERED FINANCIAL DAMAGES, WE CAN ONLY CONCLUDE FROM A READING OF THE DECISION THAT AS A RESULT OF THE RESPONDENT'S

ACTIVITIES THE APPLICANT MUST HAVE SUFFERED DAMAGES. NEVERTHELESS, THE BOARD FOUND THAT IN THE ABSENCE OF AN EMPLOYMENT RELATIONSHIP BETWEEN THE APPLICANT AND THE PERSONS WHO ENGAGED IN THE UNLAWFUL STRIKE THE BOARD WAS NOT PREPARED TO GIVE ITS CONSENT TO THE INSTITUTION OF A PROSECUTION. IT HARDLY NEEDS STATING THAT ALTHOUGH THE APPLICANT TRADE UNION IS THE BARGAINING AGENT FOR THE EMPLOYEES OF THE APPLICANT COMPANY, THERE IS NO EMPLOYMENT RELATIONSHIP.

9. WE WOULD POINT OUT THAT ANY DAMAGES WHICH THE APPLICANT COMPANY HAS SUFFERED WERE AS A RESULT OF THE ACTION TAKEN BY A THIRD PARTY, NAMELY THE GENERAL CONTRACTOR, AND NOT THE RESPONDENTS, ALBEIT THAT THE GENERAL CONTRACTOR'S ACTION MAY HAVE BEEN MOTIVATED BY THE CONDUCT OF THE RESPONDENTS. FURTHER, EVEN IF THE BOARD WERE TO GRANT LEAVE TO PROSECUTE, THE APPLICANT COMPANY COULD NOT OBTAIN ANY REDRESS FOR ITS LOSSES BY WAY OF INSTITUTING A PROSECUTION. FINALLY, WE DO NOT CONSIDER THAT THE FACT SITUATION IN THE CANADA PAPER CO. V. BROWN CASE (SUPRA) IS TRULY ANALOGOUS WITH THE TYPE OF LABOUR-MANAGEMENT CONFLICT WITH WHICH WE ARE HERE CONCERNED.

10. WE ARE NOT PREPARED TO DEPART FROM THE BOARD'S PAST PRACTICE IN THE INSTANT CASE. IN A FUTURE CASE, HOWEVER, THE BOARD MAY DEEM IT ADVISABLE TO REVIEW ITS PRESENT POLICY.

11. THE APPLICATION ACCORDINGLY IS DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: OCTOBER 28, 1969.

1. I DISSENT.

2. THE MATERIAL FACTS UPON WHICH THE APPLICANTS RELY IN SUPPORT OF THEIR ALLEGATIONS OF UNFAIR PRACTICES BY THE RESPONDENTS ARE SET OUT IN PARAGRAPH 2 OF THE MAJORITY DECISION.

3. IT WAS AGREED BY THE PARTIES THAT FOR THE PURPOSE OF MAKING A DETERMINATION ON WHETHER THE BOARD IN THE CIRCUMSTANCES OF THIS CASE SHOULD DEPART FROM ITS PRACTICE OF DECLINING TO GRANT CONSENT TO PROSECUTE IN CASES WHERE, AS HERE, NONE OF THE EMPLOYEES OF THE APPLICANT COMPANY OR MEMBERS OF THE APPLICANT UNION HAD ENGAGED IN AN UNLAWFUL STRIKE AS A RESULT OF THE ALLEGED ACTIVITIES OF THE RESPONDENTS, THE BOARD WOULD ASSUME FOR THE PURPOSES OF ARGUMENT THAT THE APPLICANTS HAD ESTABLISHED IN EVIDENCE THE MATERIAL FACTS UPON WHICH THEY RELY.

4. IN THE E. S. FOX PLUMBING AND HEATING CASE, O.L. R.B. MONTHLY REPORT, MARCH 1960, P. 426, THE BOARD HELD THAT A TRADE UNION IS NOT ENTITLED TO CALL AN UNLAWFUL STRIKE FOR THE PURPOSE OF ENFORCING A PROVISION IN A COLLECTIVE AGREEMENT TO WHICH IT IS NOT A PARTY. THE BOARD STATED THAT TO HOLD OTHERWISE WOULD BE OPENING THE DOOR TO COLLUSIVE ARRANGEMENTS BETWEEN A TRADE UNION AND ONE OR MORE EMPLOYERS WHICH WOULD ENABLE THE UNION TO CALL AN UNLAWFUL STRIKE OF THE EMPLOYEES OF OTHER EMPLOYERS WITH IMPUNITY. THE BOARD STATED THAT, IN ITS OPINION, THE LEGISLATION NEVER CONTEMPLATED THAT SUCH A PRACTICE SHOULD BE PERMITTED UNDER THE ACT. THE BOARD, THEREFORE, ISSUED A DECLARATION THAT THE STRIKE WAS UNLAWFUL.

5. THE SAME PRINCIPLE APPLIES IN THE INSTANT CASE. UNDER PRESENT BOARD POLICY, ONLY THOSE SUBCONTRACTORS ON THE "RED BARN" PROJECT WHOSE EMPLOYEES ENGAGED IN THE UNLAWFUL STRIKE WOULD ON APPLICATION BE GRANTED CONSENT TO PROSECUTE THE RESPONDENTS FOR THE ALLEGED VIOLATION OF SECTIONS 55 AND 57 OF THE ACT. IF THESE SUBCONTRACTORS FAIL OR ELECT NOT TO MAKE SUCH AN APPLICATION, THE RESPONDENTS HAVE COUNSELLED, PROCURED, SUPPORTED AND ENCOURAGED AN UNLAWFUL STRIKE WITH IMPUNITY BECAUSE THE BOARD REFUSES TO GRANT LEAVE TO THE AGGRIEVED APPLICANT EMPLOYER WHOSE EMPLOYEES CONTINUED TO WORK AND DID NOT PARTICIPATE IN THE UNLAWFUL STRIKE. THE BOARD SIMILARLY DENIES THE APPLICANT UNION LEAVE TO PROSECUTE THE RESPONDENTS BECAUSE THEIR MEMBERS HONOURED THEIR COLLECTIVE AGREEMENT WITH THE APPLICANT COMPANY AND DID NOT ENGAGE IN THE UNLAWFUL STRIKE CAUSED BY THE RESPONDENTS.

6. WHEN A SITUATION ARISES IN A PROCEEDING WHICH DEMONSTRATES THAT AN EXISTING BOARD POLICY DENIES AGGRIEVED PERSONS ACCESS TO THE ENFORCEMENT PROVISIONS OF THE ACT BECAUSE THE BOARD HAS STIPULATED REQUIREMENTS OR CONDITIONS OVER WHICH THE AGGRIEVED HAVE NO CONTROL AND CANNOT MEET, THE POLICY IS UNTENABLE AND SHOULD BE RECTIFIED FORTHWITH. THIS IS ESPECIALLY TRUE INASMUCH AS THE BOARD DOES NOT POLICE THE LABOUR RELATIONS ACT NOR DOES IT INITIATE PROSECUTIONS OR OTHER ENFORCEMENT PROCEEDINGS THEREUNDER.

7. FOR THESE REASONS, I WOULD ENTERTAIN THE APPLICATION AND RELIST THE MATTER FOR HEARING TO PERMIT THE APPLICANTS TO ADDUCE EVIDENCE TO SUBSTANTIATE THEIR ALLEGATIONS AGAINST THE RESPONDENTS. IF A PRIMA FACIE CASE IS ESTABLISHED, I WOULD GRANT CONSENT TO PROSECUTE THE RESPONDENTS.

INDEXED ENDORSEMENTS - SECTION 65

16420-69-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL UNION 1687 (COMPLAINANT) V. I.M.I. UNDERGROUND CONTRACTORS
LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: F. GEMUS FOR THE APPLICANT;
LLOYD J. VALIN, Q.C., WILLIAM GEORGE SAMMS FOR THE
RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: OCTOBER 16, 1969.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 65 OF
THE LABOUR RELATIONS ACT ALLEGING THAT THE RESPONDENT VIOLATED
SECTION 50 OF THE ACT.

2. THE COMPLAINANT UNION HAD MADE AN APPLICATION FOR
CERTIFICATION ON JUNE 11TH, 1969. THE RESPONDENT ADMITS EN-
GAGING IN CONTINUAL AND OVERT ANTI-UNION ACTIVITY SUFFICIENT
TO HAVE CONSTITUTED VIOLATIONS OF THE UNFAIR PRACTICE PROVI-
SIONS OF THE LABOUR RELATIONS ACT. THIS ANTI-UNION ACTIVITY
CONTINUED AT LEAST UNTIL JUNE 11TH, 1969. THE AGGRIEVED
PERSONS WERE LAID OFF ON JUNE 24TH AND 25TH.

3. THE COMPLAINANT ALLEGES THAT THESE LAY-OFFS AROSE
BECAUSE OF UNION ACTIVITY, BUT THE RESPONDENT CONTENTS THAT
THE LAY-OFFS OCCURRED AS THE RESULT OF LACK OF WORK CAUSED BY
OTHER COMPANIES WORKING AT THE SAME PROJECT.

4. MR. SAMMS, A SUPERVISOR OF THE RESPONDENT AND
FORMER UNION OFFICIAL FROM MANITOBA, TESTIFIED ON BEHALF OF
THE RESPONDENT COMPANY. HE INDICATED HE WAS AWARE OF THE
LAWS OF THIS PROVINCE. REFERRING TO A COMMENT HE HAD MADE
THAT CARRIED WITH IT THE SUGGESTION THAT THE LAY-OFFS WERE
FOR UNION ACTIVITY, HE STATED:

"I WOULDN'T THINK I SAID THIS TO MAYBERRY.
I KNOW THE LAWS OF THE PROVINCE. WHY WOULD
I SAY SOMETHING THAT WOULD INCRIMINATE ME
AND THE COMPANY?"

NOTWITHSTANDING MR. SAMMS' TRADE UNION BACKGROUND AND KNOW-
LEDGE, HE WAS ADMITTEDLY A PART OF THE COMPANY'S OVERT ANTI-
UNION ACTIVITIES. HAVING REGARD TO MR. SAMMS' ADMITTED
RECENT CONDUCT IN THE LIGHT OF HIS BACKGROUND AND KNOWLEDGE,
AND HAVING REGARD TO CERTAIN OMISSIONS FROM HIS TESTIMONY IN
THE LIGHT OF THE TESTIMONY GIVEN BY THE COMPLAINANT, WE ARE
OF THE OPINION THAT WHERE MR. SAMMS' EVIDENCE IS IN CONFLICT
WITH THE EVIDENCE OF AGGRIEVED PERSONS, WE PREFER TO ACCEPT
THE EVIDENCE OF THE AGGRIEVED PERSONS.

5. ALTHOUGH MR. SAMMS TESTIFIED THAT HE HAD ADVISED MR. OMER BEDARD, A SHIFT LEADER, ABOUT THE PENDING LAY-OFFS MR. BEDARD DENIED THIS. WE PREFER MR. BEDARD'S TESTIMONY. IN ADDITION MR. BEDARD STATED THAT HE WAS TOLD BY MR. SAMMS THAT ADDITIONAL WORK HAD BEEN OBTAINED BY THE COMPANY ON THIS PROJECT. THE CONVERSATION WITH MR. BEDARD REMAINS UNCONTRADICTED AND WE ACCEPT HIS EVIDENCE. IN ADDITION TO MR. BEDARD'S TESTIMONY THERE IS TESTIMONY BY OTHERS SURROUNDING THE CIRCUMSTANCES OF THEIR TERMINATION. WHERE THIS EVIDENCE IS IN CONFLICT WITH MR. SAMMS' EVIDENCE WE PREFER THE EVIDENCE OF THE AGGRIEVED PERSONS.

6. IN ADDITION TO THE AFOREMENTIONED EVIDENCE, MR. KEN WILSON TESTIFIED THE DAY BEFORE THE LAY-OFF HE WAS REQUESTED BY THE COMPANY TO BRING A FRIEND FOR A JOB, BUT THE NEXT DAY HE WAS TOLD ABOUT THE LAY-OFF. WE FIND THAT THE REQUEST FOR AN ADDITIONAL EMPLOYEE MADE ONE DAY BEFORE THE ANTICIPATED LAY-OFF IS MOST UNUSUAL IN VIEW OF THE COMPANY'S EVIDENCE THAT THE LACK OF WORK WAS APPARENT AND THE LAY-OFFS WERE PENDING. MR. WILSON'S EVIDENCE IS UNCONTRADICTED AND WE ACCEPT HIS EVIDENCE.

7. HAVING REGARD, THEREFORE, TO ALL OF THE EVIDENCE WE ARE NOT PREPARED TO ACCEPT THE EVIDENCE OF THE RESPONDENT.

8. ACCORDINGLY WE FIND THAT THIS APPLICATION SUCCEEDS AND THAT THE RESPONDENT HAS VIOLATED THE LABOUR RELATIONS ACT AS ALLEGED. THE RESPONDENT HAD CEASED OPERATIONS ON JULY 10TH BECAUSE IT IS A SUB-CONTRACTOR OF THE INTERNATIONAL NICKEL CO. OF CANADA LIMITED WHOSE EMPLOYEES HAVE BEEN ON STRIKE SINCE JULY 10TH OR 11TH. ACCORDINGLY, THE AGGRIEVED PERSONS ARE ONLY ENTITLED TO COMPENSATION FOR THE PERIOD JUNE 24TH UNTIL JULY 11TH. SINCE THE RESPONDENT ADMITTED AT THE HEARING THAT THESE EMPLOYEES WERE SUBJECT TO RECALL AND THAT THERE WAS NO QUESTION OF REINSTATEMENT, WE FIND THAT THE FOLLOWING PERSONS ARE ENTITLED TO COMPENSATION AS FOLLOWS:

SRECTO CVRK	-	\$384.00
ROSS MAYBERRY	-	\$293.76
MIKE PIEHLER	-	\$293.76
REJEAN RIOPEL	-	\$384.00
KEN J. WILSON	-	\$384.00
OMER BEDARD	-	\$432.00
ULRIC FORESTAL	-	\$384.00

GEORGE GALLAGHER IS NOT CLAIMING COMPENSATION.

LUCIEN ALLARD MADE NO ATTEMPT TO MITIGATE HIS LOSS AND ACCORDINGLY NO COMPENSATION IS AWARDED IN HIS CASE.

9. IN ADDITION TO THE COMPENSATION THE BOARD HEREBY ORDERS, PURSUANT TO THE PROVISIONS OF SECTION 65(4)(A), THAT IN THE EVENT THE STRIKE CONCLUDES AND THE RESPONDENT COMPANY RESUMES OPERATIONS THAT THE AFORESAID EMPLOYEES SHALL BE GIVEN PRIORITY IN BEING RECALLED TO WORK.

10. THE FOLLOWING PERSONS DID NOT APPEAR AT THE HEARING AND ACCORDINGLY, THE COMPLAINT IN SO FAR AS IT RELATES TO THOSE PERSONS IS DISMISSED: PETER H. WILSON, GERRY GILLIS, JAMES McNALLY AND ROBERT FORTIN.

DISSENT OF BOARD MEMBER H. F. IRWIN: OCTOBER 16, 1969.

1. I DISSENT FROM THE DECISION OF THE BOARD IN FINDING THAT THE RESPONDENT EMPLOYER HAS VIOLATED SECTION 50(A) OF THE LABOUR RELATIONS ACT BY LAYING-OFF THE AGGRIEVED EMPLOYEES ON OR ABOUT JUNE 24TH AND 25TH BECAUSE OF THEIR UNION ACTIVITY.

2. BY LAYING-OFF THE EMPLOYEES ON JUNE 24TH AND 25TH, THE RESPONDENT COULD NOT IN ANY WAY AFFECT THE OUTCOME OF THE APPLICATION FOR CERTIFICATION FILED BY THE COMPLAINANT UNION ON JUNE 11TH, 1969 AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS ELECTRICAL OPERATIONS. THE TERMINAL DATE WAS FIXED BY THE BOARD AS OF JUNE 18TH AND THE HEARING BEFORE THE BOARD TOOK PLACE AT TORONTO ON JUNE 26TH. AS THERE WERE NO INTERVENTIONS OR ALLEGATIONS OF UNFAIR PRACTICES, THE APPLICATION WOULD SUCCEED OR BE DISMISSED ON THE MEMBERSHIP EVIDENCE FILED WITH THE BOARD AS OF JUNE 18TH, THE TERMINAL DATE.

3. THERE WAS NO SUGGESTION OF DISCRIMINATION AS ALL THE EMPLOYEES WERE LAID-OFF AT ONE TIME EXCEPT ONE FOREMAN ELECTRICIAN WHOSE SERVICES WERE REQUIRED TO DO NORMAL MAINTENANCE WORK ON THE MINE ELEVATOR.

4. IN THESE CIRCUMSTANCES, IT IS INCONCEIVABLE THAT THE RESPONDENT WOULD SHUT DOWN ITS OPERATIONS AT THE INCO MINE AND THEREBY SUFFER FINANCIAL LOSS AND POSSIBLE CANCELLATION OF ITS CONTRACT FOR OTHER THAN SUFFICIENT AND LEGITIMATE REASONS. I ACCEPT THE STATEMENTS AND EXPLANATIONS MADE UNDER OATH BY ITS OFFICIALS THAT SUCH WAS THE CASE AND I WOULD FIND THAT THERE HAS BEEN NO VIOLATION OF SECTION 50(A) OF THE ACT AS ALLEGED BY THE COMPLAINANT.

5. I CONCUR IN THE DIRECTION OF THE BOARD THAT AS AND WHEN THE RESPONDENT RESUMES OPERATIONS IN THE INCO MINE THAT THE LAID-OFF EMPLOYEES, IF THEIR SERVICES ARE AVAILABLE, SHOULD BE GIVEN PRIORITY IN THE RECRUITMENT OF ITS WORK FORCE. THE RESPONDENT GAVE THIS UNDERTAKING TO THE BOARD AT THE HEARING IN SUDBURY ON AUGUST 15TH, 1969.

16594-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16595-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16596-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16597-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16598-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16599-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16600-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16601-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16602-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16603-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16604-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

- AND -

16605-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT)
V. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: GEORGE C. MILLER AND P. MURPHY FOR THE COMPLAINANT, GEORGE FERGUSON, Q.C., AND A. MATLOFSKY FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: OCTOBER 30, 1969.

1. THE COMPLAINANT IN THE ABOVE MATTERS HAS COMPLAINED THAT GUISEPPE MORELLO, OLAO ZANELLA, VINCENZO COLARUSSO, ACHILLE PELLECCIA, MORRIS UNGER, RENATO SIRIZZOTTI, MARIAN NOWAK, ARNALDO PEPPONI, LUIGI PAPPAIANNI, FRANCESCO PAPPAIANNI, ATTILIO ZANELLA AND ALOJZ HOCEVAR HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 54(2) OF THE LABOUR RELATIONS ACT AND HAS CLAIMED COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY THE AGGRIEVED PERSONS PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE ACT. THE PARTIES WERE IN AGREEMENT WITH RESPECT TO THE FACTS WHICH GAVE RISE TO THE COMPLAINT IN THESE MATTERS.

2. THE TWELVE AGGRIEVED PERSONS TOGETHER WITH TEN OTHER PERSONS WERE EMPLOYED BY THE RESPONDENT AND WERE INCLUDED IN A BARGAINING UNIT FOR WHICH THE COMPLAINANT WAS CERTIFIED AS BARGAINING AGENT BY THE BOARD. DURING THE COURSE OF BARGAINING FOR A FIRST COLLECTIVE AGREEMENT, THE AGGRIEVED PERSONS TOGETHER WITH OTHER EMPLOYEES WITHDREW THEIR SERVICES FROM THE RESPONDENT ON JUNE 18, 1969 ON THE GROUNDS THAT THE WORKING CONDITIONS AT THE RESPONDENT'S PLANT AND JOB SITES WERE UNSAFE. WHEN THE RESPONDENT THREATENED THE EMPLOYEES WITH DISCIPLINARY ACTION THE EMPLOYEES ATTEMPTED TO RETURN TO WORK ON JUNE 19, 1969. HOWEVER, THEY WERE REFUSED EMPLOYMENT ON THAT DATE. THE COMPLAINANT APPLIED IN AN APPLICATION TO THIS BOARD (BOARD FILE 16356-69-U) FOR A DECLARATION THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL LOCK-OUT. IN A COUNTER-APPLICATION (BOARD FILE 16333-69-U) THE RESPONDENT COMPANY APPLIED TO THE BOARD FOR A DECLARATION THAT THE EMPLOYEES ENGAGED IN AN UNLAWFUL STRIKE. FOR THE REASONS GIVEN BY THE BOARD IN THE DECISIONS DATED JULY 21, 1969 IN BOARD FILES 16356-69-U AND 16333-69-U, THE BOARD DECLARED THAT THE RESPONDENT ENGAGED IN A LOCK-OUT OF SOME OF ITS EMPLOYEES COMMENCING ON JUNE 19, 1969 AND THAT THE LOCK-OUT WAS UNLAWFUL. THE BOARD DISMISSED THE APPLICATION BY THE RESPONDENT COMPANY THAT THE EMPLOYEES ENGAGED IN AN UNLAWFUL STRIKE WHEN THEY WITHDREW THEIR SERVICES BECAUSE OF UNSAFE WORKING CONDITIONS. THE PARTIES AGREED THAT THE DIVISION OF THE BOARD IN THE INSTANT CASE WAS BOUND BY THE FINDINGS OF FACT AND DECISION OF THE BOARD IN THE EARLIER APPLICATIONS.

3. THE EVIDENCE AGREED TO AT THE HEARING IN THE INSTANT CASE WAS THAT THE AGGRIEVED PERSONS ATTENDED AT THE RESPONDENT'S PREMISES PRIOR TO 8:00 A.M. ON JUNE 19, 1969 AND EVERYDAY THEREAFTER UP TO THE HEARING OF THE STRIKE DECLARATION AND LOCK-OUT DECLARATION APPLICATIONS AND WERE REFUSED WORK. FOLLOWING THE BOARD'S DECISION DATED JULY 21, 1969, THE AGGRIEVED PERSONS REATTENDED AT THE RESPONDENT'S PREMISES AND AGAIN NO WORK WAS OFFERED TO THEM. THIS SITUATION CONTINUED UP TO AND INCLUDING AUGUST 14, 1969. SUBSEQUENT TO AUGUST 14, 1969, THE RESPONDENT WAS ENTITLED TO ENGAGE IN A LAWFUL LOCK-OUT OF ITS EMPLOYEES SINCE THE REQUIRED PERIOD OF TIME HAD ELAPSED FOLLOWING CONCILIATION SERVICES. THE COMPLAINANT HAS MADE NO CLAIM FOR RELIEF FOR ANY PERIOD SUBSEQUENT TO AUGUST 14, 1969.

4. IT WAS AGREED BY THE PARTIES THAT THE AGGRIEVED PERSONS MADE NO ATTEMPT TO FIND ALTERNATE EMPLOYMENT FOR THE PERIOD FOR WHICH THEY CLAIM COMPENSATION. THE REASON GIVEN FOR THEIR FAILURE TO MITIGATE THEIR DAMAGES BY ATTEMPTING TO FIND OTHER EMPLOYMENT WAS THAT THEY WISHED TO HOLD THEMSELVES AVAILABLE ON A DAILY BASIS FOR ANY WORK THAT THE RESPONDENT MIGHT OFFER THEM.

5. THE COMPLAINT IN THE INSTANT MATTER WAS MADE BY THE COMPLAINANT ON BEHALF OF EACH OF THE AGGRIEVED PERSONS ON AUGUST 20, 1969 WHICH WAS AFTER THE ONSET OF A LAWFUL LOCK-OUT.

6. IT WAS THE COMPLAINANT'S POSITION THAT THE AGGRIEVED PERSONS WERE UNLAWFULLY LOCKED OUT FROM AND INCLUDING JUNE 19, 1969 TO AND INCLUDING AUGUST 14, 1969. SINCE THE AGGRIEVED PERSONS PRESENTED THEMSELVES FOR EMPLOYMENT IT MUST BE FOUND THAT THEY WERE READY AND WILLING TO RETURN TO WORK. SINCE THEY HAD A RIGHT TO RETURN TO WORK AND HAD MADE THEMSELVES AVAILABLE FOR WORK THEIR CLAIM FOR COMPENSATION FOR THE PERIOD IN QUESTION SHOULD BE HONOURED IN FULL.

7. THE RESPONDENT, ON THE OTHER HAND, TOOK THE POSITION THAT THE AGGRIEVED PERSONS WERE NOT ENTITLED TO ANY COMPENSATION SINCE THE AGGRIEVED PERSONS HAD PRECIPITATED THE LOCK-OUT BY REFUSING TO WORK ON JUNE 18TH, THE DAY IMMEDIATELY PRECEDING THE LOCK-OUT. IN ADDITION, THE RESPONDENT ARGUED THAT BECAUSE THE AGGRIEVED PERSONS HAD FAILED TO MITIGATE THEIR DAMAGES AND HAD WAITED UNTIL AUGUST 20TH TO CLAIM RELIEF UNDER THE PROVISIONS OF SECTION 65 OF THE ACT, SUCH FAILURE AND DELAY ON THE PART OF THE AGGRIEVED PERSONS SHOULD PREVENT THEIR RECOVERING ANY COMPENSATION FOR LOSS OF EARNINGS THAT THEY MAY HAVE SUFFERED.

8. HAVING REGARD TO THE BOARD'S DECISIONS IN BOARD FILES 16356-69-U AND 16333-69-U DATED JULY 21, 1969, AND THE FACTS SET OUT ABOVE, WE MUST FIND THAT AT THE TIME OF THE LOCK-OUT ON JUNE 19TH THE AGGRIEVED PERSONS WERE REFUSED EMPLOYMENT OR OTHERWISE DEALT WITH CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 54(2) OF THE LABOUR RELATIONS ACT. THE UNLAWFUL ACTIVITY OF THE RESPONDENT IN REFUSING TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS THEREBY GAVE RISE TO A PROPER COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE ACT. HOWEVER, IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE TO REQUIRE AN AGGRIEVED PERSON WHO CLAIMS COMPENSATION UNDER THE PROVISIONS OF THE ACT TO TAKE REASONABLE STEPS TO TRY TO MITIGATE HIS LOSS. THIS THE AGGRIEVED PERSONS HAVE FAILED TO DO. IN ADDITION, WHILE IT IS RECOGNIZED THAT IN A LOCK-OUT SITUATION THERE MAY BE SOME JUSTIFICATION TO EXPECT THAT THE EMPLOYER WILL VOLUNTARILY RE-EMPLOY THE LOCKED OUT EMPLOYEES, THE FACTS OF THIS CASE WOULD INDICATE TO THE EMPLOYEES, AT SOME POINT IN TIME, THAT THERE WAS NO INTENTION ON THE PART OF THE RESPONDENT TO REINSTATE THE AGGRIEVED PERSONS. NO CLAIM FOR RELIEF WAS MADE UNDER SECTION 65 OF THE ACT UNTIL AFTER THE ONSET OF A LAWFUL LOCK-OUT. HAD THE COMPLAINANT OR THE AGGRIEVED PERSONS SOUGHT RELIEF UNDER SECTION 65 AT THE SAME TIME AS THE APPLICATION FOR THE LOCK-OUT DECLARATION WAS MADE, THE MATTER MAY WELL HAVE BEEN SETTLED BY A FIELD OFFICER AT THAT TIME. AGAIN, A FURTHER OPPORTUNITY WAS GIVEN ON JULY 21ST WHEN THE LOCK-OUT DECLARATION WAS MADE. SINCE THE ISSUE OF THE LOCK-OUT HAD BEEN SETTLED, THE CHANCE OF A FIELD OFFICER BEING ABLE TO BRING ABOUT A SETTLEMENT OF THE COMPLAINT WAS GREATLY ENHANCED. APART FROM AN OPPORTUNITY TO SETTLE THE MATTER, AN EARLIER COMPLAINT WOULD HAVE COME ON FOR HEARING BEFORE THE BOARD A MONTH EARLIER THAN THE INSTANT COMPLAINT WAS HEARD.

9. THE FACTS SET OUT ABOVE TEND TO INDICATE THAT THE COMPLAINANT AND THE AGGRIEVED PERSONS WERE CONTENT TO ALLOW THE TIME TO RUN FOR THE FULL PERIOD THAT THE LOCK-OUT REMAINED UNLAWFUL FOR THE PURPOSE OF BUILDING AS LARGE A CLAIM AS POSSIBLE. THIS CONTENTION IS GIVEN FURTHER CREDENCE BY THE FACT THAT THERE WAS NO REASONABLE EXPLANATION OFFERED BY THE COMPLAINANT FOR THE CONDUCT OF THE AGGRIEVED PERSONS IN PERSISTING IN THEIR REFUSAL TO ATTEMPT TO FIND ALTERNATE EMPLOYMENT WHEN IT BECAME KNOWN TO THE AGRIEVED PERSONS THAT THE RESPONDENT HAD NO INTENTION OF REINSTATING THEM. WE MUST ACCORDINGLY FIND THAT THE FAILURE OF THE AGGRIEVED PERSONS TO ACT EXPEDITIOUSLY IN SEEKING THE RELIEF CLAIMED UNDER SECTION 65 OF THE ACT COUPLED WITH THEIR FAILURE TO ATTEMPT TO MITIGATE THEIR LOSS WOULD DISSENTITLE THEM, AT SOME POINT IN TIME,

TO THE FULL RELIEF CLAIMED. WE THEREFORE FIND THAT THEIR ACTIVITY IN LEAVING THE RESPONDENT'S PREMISES ON JUNE 18TH, WHILE JUSTIFIED, WAS AN ACTIVITY THAT TOOK PLACE AS PART OF THE BARGAINING PROCESS FOR A COLLECTIVE AGREEMENT AND THEIR DELAY IN CLAIMING RELIEF UNDER SECTION 65 AND THEIR FAILURE TO MITIGATE DAMAGES BY REPORTING TO THE RESPONDENT'S PREMISES DAILY WAS AGAIN A CONCERTED EFFORT TO CREATE PRESSURE OF THE RESPONDENT AS PART OF THE BARGAINING PROCESS.

10. WHILE THE AGGRIEVED PERSONS WERE WRONG IN NOT SEEKING TO EXPEDITE THEIR CLAIM FOR RELIEF AND WERE GUILTY OF A FAILURE TO MITIGATE THEIR LOSS, THIS FACT DOES NOT COMPLETELY COUNTERBALANCE THE WRONGFUL ACTIVITY OF THE RESPONDENT IN LOCKING OUT THE EMPLOYEES ON JUNE 19TH. WE THEREFORE FIND ON ALL THE EVIDENCE THAT THE AGGRIEVED PERSONS ARE ENTITLED TO BE COMPENSATED FOR THE LOSS OF EARNINGS SUSTAINED BY THEM DURING THE INITIAL STAGES OF THE LOCK-OUT WHEN THERE WAS SOME UNCERTAINTY AS TO THEIR POSITION.

11. AT THE HEARING IN THIS MATTER THE PARTIES AGREED THAT THE BOARD SHOULD LEAVE THE MATHEMATICAL COMPUTATIONS OF THE EXACT AMOUNT OF THE LOSS OF EARNINGS SUSTAINED BY THE AGGRIEVED PERSONS TO THE PARTIES. HOWEVER, THE PARTIES REQUESTED THE BOARD TO SET GUIDELINES TO FACILITATE THE DETERMINATION OF THE RECOMPENSABLE PORTION OF THE TOTAL LOSS OF EARNINGS SUSTAINED. ACCORDINGLY, ON THE ASSUMPTION THAT THE MAXIMUM LOSS FOR THE PERIOD BETWEEN JUNE 19TH AND AUGUST 14TH WOULD BE APPROXIMATELY \$900.00, FOR AN EMPLOYEE WHO WOULD HAVE WORKED FULL TIME, OUR ASSESSMENT OF THE LOSS SUSTAINED BY THE EMPLOYEES FOR THE RECOMPENSABLE PERIOD IMMEDIATELY FOLLOWING THE LOCK-OUT ON JUNE 19, 1969 WOULD BE \$100.00 FOR EACH SUCH EMPLOYEE.

12. THE BOARD ACCORDINGLY DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT EACH OF THE AGGRIEVED PERSONS SUSTAINED BY REASON OF THEIR HAVING BEEN LOCKED OUT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND THAT EFFECT BE GIVEN TO THE GUIDELINES SET OUT ABOVE. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO ABOVE WITHIN FOURTEEN DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE AN OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE PRECISE AMOUNT TO BE PAID TO EACH OF THE AGGRIEVED PERSONS.

DECISION OF BOARD MEMBER O. HODGES: OCTOBER 30, 1969.

1. I DISSENT.

2. WHILE I AGREE THAT CLAIMS UNDER SECTION 65 SHOULD HAVE BEEN FILED IMMEDIATELY THE LOCK-OUT COMMENCED ON JUNE 19TH, I CANNOT FIND THAT THE DELAY IN FILING WAS DONE WITH A VIEW TO SIMPLY BUILDING A LARGE CLAIM. TO DO SO WITH A VIEW TO HURTING THE EMPLOYER WOULD BE AGAINST THE INTERESTS OF THE COMPLAINANTS THEMSELVES SINCE THERE COULD BE NO ASSURANCE THAT SUCH A CLAIM WOULD SUCCEED.

3. THE FACT OF THE LOCK-OUT BECOMING LAWFUL UNDER THE ACT ON AUGUST 14TH DOES NOTHING TO LIMIT THE CLAIM OF THE EMPLOYEES BEYOND THAT DATE, EXCEPT THAT SUCH LIMIT WAS PLACED ON THE CLAIMS BY THE COMPLAINANT UNION ITSELF. THE ACT WAS VIOLATED AND I WOULD HAVE ENTERTAINED A CLAIM THAT INCLUDED ANY PERIOD UP TO THE DATE OF THE HEARING BY THE BOARD.

4. HOWEVER, IN VIEW OF THE REQUEST OF THE PARTIES TO SET GUIDELINES FOR COMPENSATION, I AM OBLIGED TO CONTENT MYSELF WITH THE ASSESSMENT MADE BY THE CHAIRMAN.

16632-69-U: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 9-834 (COMPLAINANT) V. ALMA PAINT AND VARNISH COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: AUBREY E. GOLDEN, FRED GEDDES AND DOUGLAS REID FOR THE APPLICANT; B. H. STEWART AND LARRY GLASS FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 28, 1969.

1. THE COMPLAINANT ALLEGES THAT ROBERT G. COMPANION HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) AND SECTION 59(1) OF THE LABOUR RELATIONS ACT.

2. THE SECTIONS ARE AS FOLLOWS:

"50. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSONS ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS ORGANIZATION,

(A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE

THE PERSON WAS OR IS A MEMBER OF A TRADE
UNION OR WAS OR IS EXERCISING ANY OTHER
RIGHTS UNDER THIS ACT;

59(1) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR
SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION,
NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE
UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR
CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY,
OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND
NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE
EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR
ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE
UNION OR THE EMPLOYEES,

(A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION
OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(I) SEVEN DAYS HAVE ELAPSED AFTER THE
MINISTER HAS RELEASED TO THE PARTIES
THE REPORT OF A CONCILIATION BOARD
OR MEDIATOR, OR

(II) FOURTEEN DAYS HAVE ELAPSED AFTER THE
MINISTER HAS RELEASED TO THE PARTIES
A NOTICE THAT HE DOES NOT DEEM IT
ADVISABLE TO APPOINT A CONCILIATION
BOARD,

AS THE CASE MAY BE; OR

(B) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT
THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST. R.S.O. 1960, c.202, s.59(1);
1964, c.53, s.8; 1966, c.76, s.22.

3. PART OF THE EVIDENCE ADDUCED BY THE COMPLAINANT WAS
DIRECTED TOWARD ESTABLISHING THAT THE USE OF ABSUSIVE LANGUAGE
TOWARD A FOREMAN HAD, UNTIL THE PRESENT INCIDENT, BEEN CONDONED
BY THE RESPONDENT SO THAT IT HAD BECOME A CONDITION OF EMPLOY-
MENT THAT SUCH A PRACTICE MIGHT BE INDULGED IN WITH IMPUNITY.

4. WE FIND HOWEVER, AFTER A CAREFUL REVIEW OF ALL THE
EVIDENCE, THAT THE COMPLAINANT HAS NOT ESTABLISHED ANYTHING IN
THE NATURE OF A CONDITION OF EMPLOYMENT SUCH AS IT ALLEGED AND
ITS CASE FAILS ON THIS POINT.

5. THE RELIANCE PLACED BY THE COMPLAINANT UPON THE
ALLEGATIONS RELATIVE TO SECTION 59(1), WITH A VIEW TO SUPPORT-
ING ITS CLAIMS UNDER SECTION 50 IS, IN LIGHT OF THE FOREGOING,

ENTIRELY WITHOUT FOUNDATION AND THE LATTER CHARGES MUST STAND OR FALL UPON WHATEVER THEIR EXCLUSIVE AND PARTICULAR MERITS MAY BE.

6. THE EVIDENCE IS THAT COMPANION WAS A MEMBER OF THE BARGAINING COMMITTEE OF THE COMPLAINANT UNION.

7. IT IS CLEAR FROM THE EVIDENCE THAT THE INITIAL INCIDENT UNDERLYING THE DISCHARGE OF COMPANION OCCURRED AT THE LOADING DOCK OF THE RESPONDENT'S PLANT ON AUGUST 12, 1969. A DISPUTE AROSE BETWEEN COMPANION AND A YOUNG PART-TIME EMPLOYEE NAMED HOLDEN, WHEN THE LATTER ATTEMPTED TO DIRECT COMPANION TO MOVE CERTAIN DRUMS INSIDE THE PLANT FROM THE POSITION IN FRONT OF THE DOCK WHERE COMPANION HAD FIRST PLACED THEM ON UNLOADING A TRUCK.

8. DURING THE COURSE OF THE ARGUMENT BETWEEN HOLDEN AND COMPANION, THE LATTER CALLED MR. GOETTTLING, A SUPERVISOR WHO WAS PASSING, TO COME OVER TO "GET THIS GUY OFF MY BACK". IT IS COMMON GROUND THAT THE INTERVENTION OF GOETTTLING WHO ATTEMPTED TO HAVE COMPANION BRING THE DRUMS INSIDE, LED TO THE ISSUING OF CERTAIN VERY VULGAR INSTRUCTIONS TO LEAVE PROMPTLY ON THE PART OF COMPANION. THERE IS A DIFFERENCE OF OPINION IN THE EVIDENCE OF HOLDEN AND GOETTTLING ON THE ONE PART AND COMPANION AND OTHER WITNESSES ON THE OTHER AS TO WHOM THESE COARSE ORDERS WERE ADDRESSED. IT IS QUITE CLEAR HOWEVER, THAT GOETTTLING UNDERSTOOD THAT HE WAS THE ONE TO WHOM COMPANION ADDRESSED HIMSELF AND HE SO REPORTED TO HOWARD MUNROE, THE PLANT MANAGER.

9. WE FEEL WE SHOULD REMARK IN PASSING THAT WE THINK THAT HOLDEN'S SOMEWHAT PRECOCIOUS ATTEMPTS TO GIVE DIRECTIONS TO COMPANION, PARTICULARLY WHEN HE LACKED AUTHORITY TO DO SO, IRRITATED COMPANION AND PROVOKED HIM INTO CONDUCT WHICH HE MIGHT OTHERWISE HAVE AVOIDED.

10. MUNROE STATED THAT HE MADE AN INVESTIGATION OF THE INCIDENT. HE INTERVIEWED GOETTTLING WHO, OF COURSE, MADE THE COMPLAINT TO HIM, HOLDEN AND AN EMPLOYEE CARANTONIS, WHO WAS NEAR THE SCENE OF THE ALTERCATION. ON THE BASIS OF WHAT HE LEARNED FROM THESE THREE, HE DETERMINED TO DISCHARGE COMPANION. HE MADE THE DECISION WITHOUT AFFORDING COMPANION ANY REAL OPPORTUNITY TO STATE HIS SIDE OF THE CASE. HIS EVIDENCE WAS THAT HE DISCHARGED COMPANION BECAUSE OF THE LANGUAGE HE USED AND BECAUSE OF HIS FAILURE TO MOVE THE BARRELS. HE STATED "THE TOTAL INCIDENT WAS THE REASON FOR THE DISCHARGE".

11. WHILE IT MIGHT WELL BE THAT ANOTHER FORUM MIGHT HAVE DIFFICULTY FINDING JUST CAUSE FOR THE DISCHARGE OF COMPANION ON THE FOREGOING EVIDENCE, THAT IS NOT THE PRIMARY CONSIDERATION FOR THIS BOARD. THE QUESTION BEFORE THIS BOARD IS WHETHER THE RESPONDENT DISCHARGE THE AGGRIEVED BECAUSE OF HIS UNION CONNECTIONS AND ACTIVITIES. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE AND THE REPRESENTATION OF COUNSEL FOR BOTH PARTIES, THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS UPON IT IN CASES SUCH AS THIS OF ESTABLISHING BY SUBSTANTIAL EVIDENCE THAT THE COMPLAINANT WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

12. THE APPLICATION IS THEREFORE DISMISSED.

16722-69-U: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. LEMBO CORPORATION OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND J. HURD FOR THE COMPLAINANT, DOUGLAS G. HAIG FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: OCTOBER 30, 1969.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE AGGRIEVED PERSON LAWRENCE MURPHY, APPLIED FOR A JOB THROUGH CANADA MANPOWER AND WAS DIRECTED TO THE RESPONDENT WHERE HE APPLIED FOR THE POSITION OF A MACHINE OPERATOR AT THE RATE OF \$2.25 PER HOUR. HOWEVER, WHEN THE RESPONDENT DISCOVERED THE EXTENT OF HIS EXPERIENCE AND ESPECIALLY THE FACT THAT HE HAD CONSIDERABLE EXPERIENCE AS AN OPERATOR OF A BORING MILL, AS WELL AS OTHER MACHINES, MR. LEMBO, THE RESPONDENT'S VICE-PRESIDENT, STATED THAT HE WAS LOOKING FOR A MAN WITH MURPHY'S BACKGROUND TO RUN A BORING MILL OF THE NIGHT SHIFT. WHEN ASKED IF HE THOUGHT HE COULD HANDLE THE JOB, MURPHY REPLIED THAT THE BORING MILL THAT HE PREVIOUSLY OPERATED WAS MANUFACTURED BY A DIFFERENT COMPANY. HOWEVER, SINCE THE PRINCIPLES OF THE TWO MACHINES WERE THE SAME, MURPHY AGREED THAT HE THOUGHT HE COULD OPERATE THE RESPONDENT'S BORING

MILL IF GIVEN TIME TO ACCLIMATIZE. ONLY ONE OTHER EMPLOYEE WAS QUALIFIED TO OPERATE THE BORING MILL. THE RESPONDENT HIRED MURPHY ON APRIL 17, 1969 AS A MACHINIST AT THE RATE OF \$2.65 PER HOUR.

3. AROUND THE END OF APRIL OR EARLY MAY 1969, A NOTICE WAS POSTED ON THE RESPONDENT'S BULLETIN BOARD WHICH INDICATED THAT THE DAY SHIFT WAS TO COMMENCE AT 7:00 A.M. RATHER THAN 8:00 A.M. AS HAD PREVIOUSLY BEEN THE CASE. HOWEVER, IT IS CLEAR FROM THE EVIDENCE THAT THE NEW STARTING TIME WAS NOT UNIFORMLY IMPLEMENTED AND MANY EMPLOYEES CONTINUED TO REPORT AT 8:00 A.M. OR AT 7:30 A.M. MURPHY WAS ONE OF THE EMPLOYEES WHO CONTINUED TO REPORT AT 8:00 A.M. WHEN HE WORKED THE DAY SHIFT AND NO ACTION WAS TAKEN AGAINST HIM.

4. THERE WAS NO CRITICISM OF MURPHY'S WORK BETWEEN APRIL AND AUGUST. HOWEVER, IN AUGUST 1969 CERTAIN EMPLOYEES RECEIVED A MERIT INCREASE AND MURPHY DID NOT. MURPHY TESTIFIED THAT WHEN HE ASKED WHY HE DID NOT RECEIVE AN INCREASE HE WAS TOLD THAT HE WAS RECEIVING THE TOP RATE IN THE PLANT APART FROM LEAD HANDS AND FOREMEN AND IF HE WAS GIVEN AN INCREASE OTHER EMPLOYEES WOULD COMPLAIN. IT WAS SUGGESTED TO HIM, HOWEVER, THAT WHEN HE BEGAN OPERATING THE BORING MILL ON A FULL TIME BASIS THE COMPANY WOULD BE ABLE TO GIVE HIM AN INCREASE. THE DAY FOREMAN TESTIFIED, HOWEVER, THAT MURPHY WAS TOLD THAT THE REASON HE DID NOT RECEIVE AN INCREASE WAS THAT HIS WORK WAS UNSATISFACTORY.

5. THE UNION MADE APPLICATION FOR CERTIFICATION ON AUGUST 15, 1969. A STATEMENT OF OBJECTIONS BEARING THE SIGNATURES OF CERTAIN EMPLOYEES WAS FILED IN THE CERTIFICATION PROCEEDING. MURPHY HAD BEEN ASKED TO SIGN THE PETITION BUT HAD REFUSED. ON AUGUST 29, 1969, THE UNION MADE ALLEGATIONS THAT THE DOCUMENT HAD ORIGINATED WITH THE SUPPORT AND ENCOURAGEMENT OF THE RESPONDENT'S PLANT MANAGER. MURPHY WAS SUMMONED TO TESTIFY IN SUPPORT OF THE UNION'S CHARGES AT THE CERTIFICATION HEARING SCHEDULED FOR SEPTEMBER 3, 1969. MURPHY SHOWED HIS SUMMONS TO THE PLANT MANAGER AND OBTAINED PERMISSION TO BE ABSENT FROM WORK ON SEPTEMBER 3, 1969.

6. MURPHY TESTIFIED THAT MONDAY, SEPTEMBER 1ST WAS THE LABOUR DAY HOLIDAY. MURPHY HAD WORKED THE NIGHT SHIFT DURING THE MONTH OF AUGUST BUT RETURNED TO THE DAY SHIFT ON TUESDAY, SEPTEMBER 2ND WHEN HE REPORTED FOR WORK AT 8:00 A.M. HE TESTIFIED THAT NOTHING WAS SAID TO HIM ON TUESDAY ABOUT HIS REPORTING TIME. ON WEDNESDAY, SEPTEMBER 3RD, MURPHY APPEARED BEFORE THE ONTARIO LABOUR RELATIONS BOARD TO TESTIFY ON BEHALF

OF THE UNION. ON THURSDAY, SEPTEMBER 4TH, MURPHY AGAIN REPORTED FOR WORK AT 8:00 A.M. SHORTLY AFTER 8:00 A.M., MR. McCANN, THE DAY FOREMAN, TOLD MURPHY THAT THE DAY SHIFT STARTED AT 7:00 A.M. AND HE WOULD BE REQUIRED TO REPORT AT 7:00 A.M. THE NEXT MORNING. ON FRIDAY, SEPTEMBER 5TH, MURPHY AGAIN REPORTED AT 8:00 A.M. MURPHY TESTIFIED THAT WHEN McCANN ASKED WHY HE HAD NOT REPORTED AT 7:00 A.M. HE STATED THAT HE HAD DIFFICULTY ADJUSTING TO THE DAY SHIFT AFTER HAVING WORKED A MONTH ON THE NIGHT SHIFT. APPARENTLY McCANN BECAME VERY AGITATED AND THEIR DISCUSSION GENERATED MORE THAN A LITTLE HEAT. McCANN THREATENED MURPHY WITH THE LOSS OF HIS JOB IF HE FAILED TO REPORT AT 7:00 A.M. AND WORK A FULL DAY ON SATURDAY, SEPTEMBER 6TH. MURPHY TESTIFIED THAT HE HAD ONLY WORKED ON ONE SATURDAY DURING THE FULL PERIOD OF HIS EMPLOYMENT WITH THE RESPONDENT AND THAT IT WAS NOT THE RESPONDENT'S USUAL PRACTICE TO WORK SATURDAYS. MURPHY OBJECTED TO BEING THREATENED WITH THE LOSS OF HIS JOB FOR FAILING TO REPORT FOR WORK ON SATURDAY AND HE OBTAINED AN INTERVIEW WITH THE PLANT MANAGER TO DISCUSS THE MATTER. MURPHY EXPLAINED HIS POSITION TO THE PLANT MANAGER AND SUGGESTED THAT HE HAD CERTAIN RIGHTS AND WOULD REPORT THE EMPLOYER TO THE DEPARTMENT OF LABOUR IF IT REQUIRED HIM TO WORK ON SATURDAY. BECAUSE OF MURPHY'S HIGHLY AGITATED STATE COUPLED WITH HIS COMPLAINT CONCERNING WHAT APPARENTLY WAS AN ALLEGED VIOLATION OF THE EMPLOYMENT STANDARDS ACT, THE PLANT MANAGER AGREED TO PERMIT MURPHY TO LEAVE WORK FOR THE REMAINDER OF THE DAY ON FRIDAY AND FURTHER AGREED THAT HE WOULD NOT BE REQUIRED TO REPORT FOR WORK ON SATURDAY. THE PLANT MANAGER ALSO TOLD MURPHY TO REPORT FOR WORK ON MONDAY, SEPTEMBER 8TH AND FURTHER ADVISED MURPHY THAT HE WOULD BE TRANSFERRED TO THE NIGHT SHIFT ON MONDAY, SEPTEMBER 15TH.

7. DURING THE AFTERNOON OF SEPTEMBER 5TH, MR. LEMBO TELEPHONED MURPHY AND ASKED HIM TO REPORT TO HIS OFFICE. MURPHY ATTENDED AT LEMBO'S OFFICE AND INFORMED HIM OF McCANN'S THREAT AND THE FACT THAT HE INTENDED TO WRITE TO THE DEPARTMENT OF LABOUR. LEMBO SUGGESTED THAT MURPHY GO HOME AND NOT COME IN ON SATURDAY BUT TO HAVE A GOOD REST FOR THE WEEKEND AND REPORT FOR WORK AT 7:00 A.M. THE FOLLOWING MONDAY.

8. ON MONDAY, SEPTEMBER 8TH, TUESDAY, SEPTEMBER 9TH AND WEDNESDAY, SEPTEMBER 10TH, MURPHY REPORTED FOR WORK AT 7:00 A.M. AS REQUESTED. ON THURSDAY, SEPTEMBER 11TH, MURPHY APPEARED AS A UNION WITNESS AT THE SECOND HEARING BEFORE THE LABOUR RELATIONS BOARD IN THE CERTIFICATION APPLICATION AT WHICH TIME HE TESTIFIED CONCERNING THE PLANT MANAGER'S INVOLVEMENT WITH THE PETITION. ON FRIDAY, SEPTEMBER 12TH, MURPHY AGAIN REPORTED FOR WORK ON THE DAY SHIFT AT 7:00 A.M. ON MONDAY, SEPTEMBER 15TH, MURPHY REPORTED FOR WORK AT THE COMMENCEMENT OF THE NIGHT SHIFT.

9. NOTHING WAS SAID TO MURPHY BETWEEN SEPTEMBER 5TH AND SEPTEMBER 15TH AND NOTHING OUT OF THE ORDINARY OCCURRED DURING THE PERIOD APART FROM MURPHY'S ATTENDANCE AS A UNION WITNESS BEFORE THE LABOUR RELATIONS BOARD.

10. ONE HOUR AFTER THE COMMENCEMENT OF HIS SHIFT ON TUESDAY, SEPTEMBER 16TH, THE PLANT MANAGER REQUESTED MURPHY TO COME TO HIS OFFICE. MURPHY WAS ADVISED BY THE PLANT MANAGER THAT HE WAS DISCHARGED. WHEN ASKED TO GIVE A REASON THE PLANT MANAGER TOLD HIM THAT HIS WORK WAS NOT UP TO STANDARD AND HE WAS DISCHARGED AS OF SEPTEMBER 16TH.

11. AT MURPHY'S REQUEST, THE RESPONDENT SET OUT THE REASONS FOR HIS DISCHARGE AS FOLLOWS:

TO WHOM IT MAY CONCERN

MR. L. MURPHY HAS REQUESTED THAT WE PLACE IN WRITING THE REASONS FOR HIS DISMISSAL. THIS LETTER IS OUR COMPLIANCE WITH HIS REQUEST.

MR. MURPHY WAS HIRED ON APRIL 21, 1969. AT THE TIME OF HIS HIRING, HE WAS INTERVIEWED BY MYSELF AND MR. LEMBO. MR. MURPHY DURING THAT INTERVIEW STATED THAT HE WAS A MACHINIST. MR. LEMBO TOLD MR. MURPHY THAT HE WOULD BE HIRED AS A MACHINIST AND GIVEN TOP RATE TO START, BUT THAT FAILURE TO MEET UP TO STANDARDS WOULD MEAN HIS DISMISSAL. MR. MURPHY SAID HE WOULD ACCEPT THIS, AND WAS CONFIDENT IN HIS ABILITY.

SINCE THAT TIME, MR. MURPHY HAS SHOWN THAT HE DOES NOT MEET UP TO STANDARDS OF A MACHINIST.

INDICATIONS OF THIS IS AS FOLLOWS:

- (1) HE CONSISTENTLY ASKED THE FOREMEN QUESTIONS, WHICH ARE CONSIDERED BASIC REQUIREMENTS FOR MACHINE OPERATORS.
- (2) HE CONSISTENTLY REQUIRED THE FOREMAN TO CHECK HIS WORK AFTER VARIOUS OPERATIONS, INDICATING HIS OWN BASIC UNCERTAINTY ABOUT HIS WORK.
- (3) HIS TIME ON VARIOUS JOBS AND OPERATIONS WERE CONSISTENTLY GREATER THAN TIMES ON SIMILAR JOBS DONE BY FELLOW WORKERS, WHO WERE AND ARE CONSIDERED MACHINE OPERATORS.

- (4) HE SHOWED A BASIC INABILITY TO GO FROM ONE PIECE OF EQUIPMENT TO ANOTHER, AND WAS HESITANT IN MAKING SUCH CHANGES. SUCH AN ABILITY IS A PRIME PREREQUISITE OF A MACHINIST.
- (5) FINALLY, HE WAS REQUIRED TO SWITCH SHIFTS ON A ROTATING BASIS. SUCH SWITCHES PROVED HIGHLY UNSETTLING TO HIM AND MADE HIM IRRITABLE AND DISTRAUGHT. ON SEVERAL OCCASIONS HE CAME IN LATE AFTER SHIFT CHANGES, AND BECAUSE OF THIS DISTRAUGHT CONDITION, WHEN ADVISED OF THE STARTING TIME, HE BECAME OFFENSIVE AND OBUSIVE. HE THREATENED THAT HE COULD NOT BE TOLD HE MUST START AT SEVEN O'CLOCK AND WOULD REPORT THE COMPANY TO THE LABOUR BOARD FOR SAYING HE MUST. ON ONE OCCASION HE BECAME HIGHLY AGITATED AND SAID HE COULD NOT STAY AND LEFT FOR HOME.

IN CONCLUSION WE FOUND MR. MURPHY A COMPETENT MACHINE OPERATOR, BUT NOT A MACHINIST. THE POSITION FOR WHICH HE APPLIED AND THE PAY FOR WHICH HE ACCEPTED.

WE FOUND ALSO THAT SHIFT CHANGES MADE HIM HIGHLY IRRITABLE AND NERVOUS, A CONDITION NOT CONDUSIVE TO GOOD WORK OR SAFE OPERATION OF POTENTIALLY DANGEROUS EQUIPMENT.

MR. MURPHY WAS GIVEN A NORMAL 120 DAY TRIAL PERIOD IN HOPES OF IMPROVEMENT. HE DISPLAYED NO PROGRESS OR IMPROVEMENT DURING THIS TIME.

YOURS VERY TRULY,

"J. C. GIAQUINTO",
PLANT MANAGER.

12. MR. LEMBO TESTIFIED THAT MURPHY WAS DISCHARGED BECAUSE OF HIS PERFORMANCE AND THAT THIS DECISION TO DISCHARGE HIM WAS NOT MADE PRECIPITOUSLY SINCE THE COMPANY HAD EXPERIENCED DIFFICULTY IN FINDING QUALIFIED EMPLOYEES. LEMBO STATED THAT THE DECISION TO DISCHARGE MURPHY WAS MADE FOLLOWING A REVIEW OF HIS WORK RECORD WHICH LEMBO HAD ORDERED TO BE MADE ON SEPTEMBER 5TH. THE DECISION WAS NOT MADE UNTIL SEPTEMBER 15TH BECAUSE LEMBO HAD BEEN OUT OF TOWN ON BUSINESS DURING THE INTERVENING PERIOD.

13. BOTH THE NIGHT FOREMAN AND THE DAY FOREMAN TESTIFIED CONCERNING MURPHY'S WORK. MR. WEEKS, THE NIGHT FOREMAN, TESTIFIED IN AN APPARENTLY HONEST AND FORTHRIGHT MANNER. HE STATED THAT MURPHY CHECKED WITH HIM BEFORE PROCEEDING WITH DIFFERENT WORK AND AGREED THAT MURPHY WAS A CAREFUL AND CONSCIENTIOUS WORKER AND A GOOD MACHINE OPERATOR. ALTHOUGH HE HAD NO REAL COMPLAINT ABOUT MURPHY'S WORK, HE STATED THAT HE KNEW MURPHY WAS NOT A LICENSED MACHINIST.

14. THE DAY FOREMAN, MR. McCANN, ALSO TESTIFIED CONCERNING MURPHY'S WORK. HOWEVER, FROM THE MANNER IN WHICH McCANN TESTIFIED AND THE FACT THAT HE REGULARLY REFUSED TO GIVE A STRAIGHT ANSWER TO QUESTIONS PUT TO HIM BUT INSISTED ON TRYING TO ASSUME THE CONDUCT OF THE CASE BY COLOURING HIS EVIDENCE WITH QUALIFICATIONS AND JUSTIFICATIONS, WE FIND THAT McCANN WAS MORE INTENT ON CRUCIFYING MURPHY RATHER THAN MERELY TESTIFYING IN A FAIR AND FORTHRIGHT MANNER. FOR THESE REASONS, WHEN ASSESSING THE CREDIBILITY OF McCANN AND MURPHY, WE PREFER THE EVIDENCE OF MURPHY WHERE HIS EVIDENCE IS IN CONFLICT WITH THE TESTIMONY OF McCANN. IN ADDITION, WHEN COMPARING THE Demeanour OF MURPHY AND McCANN IN THE WITNESS BOX, IT IS OUR OPINION THAT McCANN IS BY FAR THE MORE EXCITABLE AND NERVOUS PERSON.

15. ON THE EVIDENCE BEFORE US, WE FIND THAT MURPHY WAS A COMPETENT AND QUALIFIED MACHINE OPERATOR. ALTHOUGH CLASSIFIED AS A MACHINIST BY THE RESPONDENT FOR PAY PURPOSES, THE RESPONDENT HAD FULL KNOWLEDGE OF HIS QUALIFICATIONS AND EXPERIENCE. THE RESPONDENT KNEW THAT HE WAS NOT A LICENSED MACHINIST AND COULD NOT PROPERLY FUNCTION AS A QUALIFIED MACHINIST. WHEN MURPHY WAS HIRED THE RESPONDENT WAS DESIROUS OF OBTAINING HIS SERVICES AS A BORING MILL OPERATOR AND WAS PREPARED TO PAY HIM UNDER THE CLASSIFICATION OF MACHINIST BECAUSE OF HIS EXPERIENCE ON A BORING MILL.

16. IF THE RESPONDENT WAS NOT PREPARED TO CONTINUE TO PAY MURPHY AS A MACHINIST, IT WOULD NOT BE UNREASONABLE TO EXPECT THAT THE RESPONDENT WOULD HAVE OFFERED TO RECLASSIFY HIM AS A MACHINE OPERATOR SINCE IT ACKNOWLEDGED THAT HE WAS A GOOD MACHINE OPERATOR AND THE COMPANY WAS ALSO HAVING DIFFICULTY RECRUITING EMPLOYEES. THERE WAS NO CRITICISM OF MURPHY'S SERVICES UNTIL THE UNION CAME ON THE SCENE.

17. ON THE EVIDENCE, WE MUST FIND THAT THE RESPONDENT WAS SATISFIED WITH MURPHY'S PERFORMANCE UP TO THE END OF AUGUST SINCE THERE WAS NO ATTEMPT TO CAUSE HIM TO IMPROVE HIS PERFORMANCE UP TO THAT TIME. SINCE THE COMPANY ACKNOWLEDGED THAT IT

WAS HAVING DIFFICULTY FINDING EXPERIENCED EMPLOYEES, IT WOULD BE UNREASONABLE TO FIND THAT THE RESPONDENT DISMISSED MURPHY FOR THE REASONS GIVEN SINCE HE WAS ACKNOWLEDGED TO BE A COMPETENT MACHINE OPERATOR.

18. SINCE THE RESPONDENT HAD THE RIGHT TO REQUIRE MURPHY TO REPORT AT 7:00 A.M. FOR THE DAY SHIFT, IT MIGHT BE ARGUED THAT THE RESPONDENT WOULD HAVE BEEN JUSTIFIED IN DISMISSING MURPHY ON SEPTEMBER 5TH FOR CONSISTENTLY REFUSING TO REPORT AT 7:00 A.M. HOWEVER, THE RESPONDENT DID NOT DISCHARGE MURPHY ON SEPTEMBER 5TH FOR REFUSING TO REPORT AT 7:00 A.M. BOTH THE PLANT MANAGER AND MR. LEMBO AGREED TO GIVE MURPHY ANOTHER CHANCE. MURPHY CONSISTENTLY REPORTED FOR WORK AT 7:00 A.M. WHILE ON THE DAY SHIFT SUBSEQUENT TO SEPTEMBER 5TH. BETWEEN SEPTEMBER 5TH AND SEPTEMBER 16TH, THERE WAS NOTHING IN MURPHY'S CONDUCT WHICH GAVE RISE TO COMPLAINT. IN ADDITION, IT WAS NOT UNTIL IT BECAME KNOWN THAT MURPHY WOULD BE A UNION WITNESS THAT THERE WAS ANY ATTEMPT TO CAUSE HIM TO REPORT EARLIER THAN 8:00 A.M.

19. TO NOW ATTEMPT TO JUSTIFY MURPHY'S DISMISSAL BECAUSE HE WAS NOT A QUALIFIED MACHINIST, WHEN THIS FACT WAS KNOWN AT THE TIME OF HIS HIRING AND WHEN NO CRITICISM HAD EVER BEEN MADE OF HIS PERFORMANCE, IS A PATENTLY TRANSPARENT ATTEMPT TO HIDE THE TRUE REASONS FOR HIS DISCHARGE.

20. HAVING ASSESSED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE REAL REASON FOR THE DISCHARGE OF MURPHY WAS THE FACT THAT HE WAS A WITNESS WHO TESTIFIED IN SUPPORT OF THE UNION. WE ACCORDINGLY FIND THAT LAWRENCE MURPHY WAS DISCHARGED BY THE RESPONDENT ON SEPTEMBER 16, 1969 CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 59A OF THE ACT.

21. WE THEREFORE DETERMINE THAT:

- (A) LAWRENCE MURPHY SHALL BE REINSTATED FORTHWITH IN THE POSITION HELD BY HIM AT THE TIME OF HIS DISCHARGE;
- (B) THAT THE RESPONDENT PAY TO LAWRENCE MURPHY THE SUM OF \$548.55 FORTHWITH AS COMPENSATION FOR THE LOSS OF EARNINGS SUSTAINED BY HIM BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER;
- (C) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT LAWRENCE MURPHY SUSTAINED BY

REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF HIS DISCHARGE AND THE HEARING IN THIS MATTER AND THE DATE OF HIS REINSTATEMENT; AND

- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (C) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO LAWRENCE MURPHY.

DECISION OF BOARD MEMBER H. F. IRWIN: OCTOBER 30, 1969.

1. I DISSENT.

2. ON THE EVIDENCE ADDUCED AT THE BOARD HEARING HELD IN MIDLAND ON FRIDAY, OCTOBER 17TH, 1969, I AM IMPELLED TO FIND THAT THE COMPLAINANT UNION HAS NOT DISCHARGED THE HEAVY ONUS UPON IT TO ADDUCE SATISFACTORY AND SUFFICIENT EVIDENCE THAT THE AGGRIEVED EMPLOYEE, LAWRENCE MURPHY, WAS DISCHARGED FROM HIS EMPLOYMENT BY THE RESPONDENT COMPANY BECAUSE OF HIS UNION ACTIVITY OR FOR TESTIFYING AS A UNION WITNESS BEFORE THE BOARD AT THE HEARING HELD IN TORONTO ON SEPTEMBER 11TH, 1969 CONTRARY TO SECTIONS 50 AND 59A OF THE LABOUR RELATIONS ACT AND I WOULD HAVE DISMISSED THE COMPLAINT.

INDEXED ENDORSEMENT - SECTION 39(3)

16759-69-M: THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO (COMPANY) AND LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (TRADE UNION).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: OCTOBER 23, 1969.

1. THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO WAS A PARTY TO A COLLECTIVE AGREEMENT WITH LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351.

2. THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO AND THE UNION JOINTLY MADE APPLICATION FOR EARLY TERMINATION OF THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THEM. AT THE TIME THE APPLICATION WAS MADE, THE FOLLOWING COMPANIES WERE MEMBERS OF THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO:

TOILET LAUNDRIES LIMITED
STAR LINEN SUPPLY & HOME LAUNDRY COMPANY
SANITARY LAUNDRY COMPANY
CANADIAN LINEN SUPPLY (ONT) LIMITED
CENTRAL OVERALL CLEANERS & SUPPLY COMPANY
ONTARIO LAUNDRY LIMITED
SUNSHINE UNIFORM SUPPLY COMPANY
NORTHERN INDUSTRIAL LAUNDRIES LTD.
CARDWELL'S LAUNDERERS & CLEANERS
NEW METHOD LAUNDRY COMPANY LIMITED
BRIGHTON LAUNDRY LIMITED
FASTER LINEN SERVICE
PARISIAN FABRIC CARE SERVICES LIMITED
BOOTH AVENUE HOSPITAL LAUNDRY INC.
CENTENNIAL HOSPITAL LINEN SERVICES
INDEPENDENT TOWEL SUPPLY CO. LTD.

3. THE BOARD CAUSED EACH OF THE MEMBER COMPANIES TO POST NOTICE OF THE APPLICATION FOR EARLY TERMINATION OF THE COLLECTIVE AGREEMENT TO THE ATTENTION OF THE EMPLOYEES OF EACH OF THE COMPANIES. FOLLOWING POSTING OF NOTICE OF THE APPLICATION, CERTAIN EMPLOYEES OF PARISIAN FABRIC CARE SERVICES LIMITED OBJECTED TO THE EARLY TERMINATION OF THE COLLECTIVE AGREEMENT BINDING UPON THEM.

4. BY LETTER DATED OCTOBER 21, 1969, THE SOLICITORS FOR THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO ADVISED THE BOARD THAT PARISIAN FABRIC CARE SERVICES LIMITED HAD RESIGNED AS OF OCTOBER 21, 1969 FROM MEMBERSHIP IN THE EMPLOYERS' COMMITTEE. THE SOLICITORS FOR THE COMPANY REQUESTED THAT THIS APPLICATION BE WITHDRAWN IN SO FAR AS IT AFFECTS PARISIAN FABRIC CARE SERVICES LIMITED.

5. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 CONSENTED AND JOINED IN THE REQUEST TO WITHDRAW THIS APPLICATION IN SO FAR AS IT AFFECTS PARISIAN FABRIC CARE SERVICES LIMITED.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, AT THE REQUEST OF THE COMPANY WITH THE CONSENT OF THE UNION AND BY LEAVE OF THE BOARD, THIS APPLICATION IS WITHDRAWN AS IT AFFECTS PARISIAN FABRIC CARE SERVICES LIMITED.

7. THE BOARD FINDS THAT, PURSUANT TO THE PROVISIONS OF SECTION 38(1) OF THE LABOUR RELATIONS ACT, PARISIAN FABRIC CARE SERVICES LIMITED IS DEEMED TO BE A PARTY TO A LIKE AGREEMENT WITH LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351. SUCH LIKE AGREEMENT WILL BE LIKE THE AGREEMENT MADE BETWEEN THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO AND THE UNION DATED DECEMBER 1, 1966, AND THE SAID LIKE AGREEMENT SHALL REMAIN IN FORCE UNTIL THE 30TH DAY OF NOVEMBER, 1969, AND SHALL CONTINUE IN FORCE AND EFFECT FROM YEAR TO YEAR THEREAFTER UNLESS IN ANY ONE YEAR NOT MORE THAN SIXTY DAYS AND NOT LESS THAN THIRTY DAYS BEFORE THE DATE OF ITS TERMINATION EITHER PARTY SHALL FURNISH THE OTHER WITH NOTICE OF TERMINATION OF OR PROPOSED REVISION OF THE SAID AGREEMENT.

8. HAVING REGARD TO THE JOINT APPLICATION FOR EARLY TERMINATION OF THE COLLECTIVE AGREEMENT BY THE EMPLOYERS' COMMITTEE OF THE LINEN SUPPLY INDUSTRY OF TORONTO AND LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351, WHICH WAS TO EXPIRE ON NOVEMBER 30, 1969, SUBJECT TO RENEWAL, AND NOTICE OF THE APPLICATION HAVING BEEN POSTED ON THE PREMISES OF EACH OF THE MEMBER EMPLOYERS, PURSUANT TO THE PROVISIONS OF SECTION 39(3) OF THE LABOUR RELATIONS ACT, THE BOARD CONSENTS TO THE EARLY TERMINATION OF THE SAID COLLECTIVE AGREEMENT AS OF THE DATE HEREOF WITH RESPECT TO THE FOLLOWING MEMBER COMPANIES:

TOILET LAUNDRIES LIMITED
STAR LINEN SUPPLY & HOME LAUNDRY COMPANY
SANITARY LAUNDRY COMPANY
CANADIAN LINEN SUPPLY (ONT) LIMITED
CENTRAL OVERALL CLEANERS & SUPPLY COMPANY
ONTARIO LAUNDRY LIMITED
SUNSHINE UNIFORM SUPPLY COMPANY
NORTHERN INDUSTRIAL LAUNDRIES LTD.
CARDWELL'S LAUNDERERS & CLEANERS
NEW METHOD LAUNDRY COMPANY LIMITED
BRIGHTON LAUNDRY LIMITED
FASTER LINEN SERVICE
BOOTH AVENUE HOSPITAL LAUNDRY INC.
CENTENNIAL HOSPITAL LINEN SERVICES
INDEPENDENT TOWEL SUPPLY Co. LTD.

INDEXED ENDORSEMENT - SECTION 47A

15941-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v.
THE ELGIN COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
H. F. IRWIN: OCTOBER 1, 1969.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.
2. PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO, CHAPTER 122, THE ELGIN COUNTY BOARD OF EDUCATION ON JANUARY 1st, 1969 BECAME A DIVISIONAL BOARD THAT HAD JURISDICTION OVER THE SCHOOL DIVISION IN ELGIN COUNTY WHICH FORMERLY COMPRISE DISTINCT PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS. AS OF JANUARY 1st, 1969, THE SAID PUBLIC SCHOOL BOARDS AND THE HIGH SCHOOL BOARDS WERE DISSOLVED.
3. AT THE TIME OF THE DISSOLUTION OF THE SAID PUBLIC BOARDS AND THE HIGH SCHOOL BOARDS, THE APPLICANT HELD BARGAINING RIGHTS FOR EMPLOYEES OF THE FOLLOWING BOARDS:
 1. WEST ELGIN DISTRICT HIGH SCHOOL BOARD
 2. EAST ELGIN DISTRICT HIGH SCHOOL BOARD
 3. ALDBOROUGH TOWNSHIP PUBLIC SCHOOL AREA BOARD
 4. THE PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF THE TOWNSHIP OF DUNWICH.
4. THE ST. THOMAS CARETAKERS' ASSOCIATION, LOCAL 332, CANADIAN UNION OF PUBLIC EMPLOYEES HELD BARGAINING RIGHTS FOR CERTAIN EMPLOYEES OF THE ST. THOMAS PUBLIC SCHOOL BOARD AT THE TIME OF DISSOLUTION. AT THAT SAME TIME, CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL UNION NUMBER 35 (CENTRAL ELGIN DISTRICT HIGH SCHOOL CARETAKERS' UNIT) HELD BARGAINING RIGHTS FOR CERTAIN EMPLOYEES OF CENTRAL ELGIN DISTRICT HIGH SCHOOL BOARD.
5. HAVING REGARD TO THE DECISION OF THE BOARD IN THE MIDDLESEX COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15935-68-M), WE FIND THAT SECTION 47A OF THE LABOUR RELATIONS ACT IS APPLICABLE. ON THE SAME BASIS AND HAVING CONSIDERED THE SUBMISSIONS OF THE PARTIES WE FURTHER FIND A UNIT COMPOSED OF EMPLOYEES ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS TO BE APPROPRIATE HEREIN FOR THE PURPOSES OF COLLECTIVE BARGAINING.
6. ON THE BASIS OF ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN, THE BOARD FINDS THAT VINCENT BLACK, SUPERVISOR OF TRANSPORTATION; EARL McMASTER, SUPERVISOR OF BUILDINGS AND MAINTENANCE; SHARON McCORMACK, ASSISTANT

SUPERVISOR OF BUILDINGS AND MAINTENANCE; AND KEN WILLIAMS, SUPERVISING CUSTODIAN, ALL EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

7. THE BOARD FURTHER FINDS ON THE EVIDENCE IN THE REPORT THAT ANDREW TOLMIE, NORMAN PLAYER, RAY LEMON, FRED CLARK, SR., TOM CROWES AND MADISON CHUTE, CLASSIFIED AS HIGH SCHOOL HEAD CUSTODIANS, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

8. THE BOARD FURTHER FINDS ON THE EVIDENCE IN THE REPORT THAT BERNARD FLUKER, HARRY SCHINDLER, ALBERT HULL, GUY LETHBRIDGE AND MADISON CHUTE, CLASSIFIED AS BUS SUPERVISORS, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

9. THE BOARD FURTHER FINDS ON THE EVIDENCE THAT GEORGE NEWMAN, WILLIAM HOWEY AND ALBERT JONCKHEERE, CLASSIFIED BY THE RESPONDENT AS HEAD CUSTODIANS, DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

10. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISOR OF TRANSPORTATION, SUPERVISOR OF BUILDINGS AND MAINTENANCE, ASSISTANT SUPERVISOR OF BUILDINGS AND MAINTENANCE, SUPERVISING CUSTODIAN, HIGH SCHOOL HEAD CUSTODIANS, BUS SUPERVISORS AND PERSONS ABOVE THOSE RANKS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. HAVING REGARD TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA), THE BOARD'S DECISION DATED MAY 8, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15561-68-M), AND THE FACT THAT THE APPLICANT ONLY REPRESENTS A PART OF THE UNIT FOUND TO BE APPROPRIATE, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

12. ACCORDINGLY, PURSUANT TO SUBSECTION (7) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN

THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH:

(A) CANADIAN UNION OF PUBLIC EMPLOYEES; OR
(B) THE ST. THOMAS CARETAKERS' ASSOCIATION
LOCAL 332, CANADIAN UNION OF PUBLIC
EMPLOYEES; OR

(C) CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL
UNION NUMBER 35 (CENTRAL ELGIN DISTRICT
HIGH SCHOOL CARETAKERS' UNIT).

14. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: OCTOBER 1, 1969.

1. I DISSENT.

2. MY DIFFERENCE WITH THE MAJORITY FINDINGS IS IN THE MATTER OF CERTAIN CLASSIFICATIONS EXCLUDED FROM THE BARGAINING UNIT. I WOULD NOT HAVE EXCLUDED EITHER HIGH SCHOOL HEAD CUSTODIANS OR BUS SUPERVISORS.

3. THE WEIGHT OF THE EVIDENCE HERE IS MAINLY ON THE SIDE OF A LEAD HAND FUNCTION IN BOTH OF THESE CLASSIFICATIONS. WHAT LITTLE INDEPENDANT DISCRETION THESE PERSONS DO EXERCISE IS NOT ENOUGH TO DENY THEM THE BENEFITS OF COLLECTIVE BARGAINING. THE EVIDENCE IS THAT IN SOME INSTANCES, ALMOST ALL THE TIME OF THESE EMPLOYEES IS SPENT ON MANUAL LABOUR ALONG WITH OTHER EMPLOYEES - OR DOING A JOB THEMSELVES THAT WOULD NORMALLY BE CLASSIFIED AS A BARGAINING UNIT OCCUPATION.

4. LEAD HANDS MAY BE ASSIGNED SOME DISCRETIONARY AUTHORITY OVER THE DIRECTION OF FELLOW EMPLOYEES AND EVEN GIVEN SOME DECISION MAKING RESPONSIBILITY IN MATTERS CONSIDERED TO BE MANAGERIAL, WITHOUT REQUIRING THEIR EXCLUSION FROM THE BARGAINING UNIT, IN MY OPINION. THE DEGREE OF SUCH DISCRETION AND RESPONSIBILITY IS HERE FAR OUTWEIGHED BY THE PRACTICAL FACT THAT THESE PERSONS MOSTLY WORK IN OCCUPATIONS THAT SHOULD BE BARGAINING UNIT WORK.

5. THERE ARE AT LEAST TWO LEVELS OF EXCLUDED SUPERVISION ABOVE THE CATEGORIES WITH WHICH I AM CONCERNED HERE, AND THAT SHOULD BE ADEQUATE TO SERVE THE REQUIREMENTS OF MANAGEMENT IN ALL OF THESE CIRCUMSTANCES.

6. I THEREFORE FIND THAT HIGH SCHOOL HEAD CUSTODIANS AND BUS SUPERVISORS SHOULD BE INCLUDED IN THE BARGAINING UNIT.

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

16831-69-JD: PITTS-MCNAMARA-ATLAS -- A JOINT VENTURE OF C.A. PITTS CONSTRUCTION (ONTARIO) LTD., MCNAMARA CORPORATION LIMITED AND ATLAS CONSTRUCTION CO LIMITED (COMPLAINANT) v. 1. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PUMING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION No. 800. 2. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 493 (RESPONDENTS) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: B. W. BINNING, C. BOLAND, Q.C., AND W. BATEMAN FOR THE COMPLAINANT, A. MINSKY, R. KOSKIE AND A.J.P. FOUCAULT FOR THE RESPONDENTS, W. W. LIPPETT AND H. A. HERRON FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 14, 1969.

1. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 HAVING DEMONSTRATED AN INTEREST IS HEREBY JOINED AS A PARTY TO THIS PROCEEDING.

2. THE COMPLAINANT IN ITS COMPLAINT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

3. THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE INSTANT DISPUTE.

4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

- (A) IN THE INSTALLATION, OPERATION AND MAINTENANCE OF TEMPORARY DEWATERING SYSTEM AT THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO-LOWER NOTCH GENERATING STATION PROJECT, THE COMPLAINANT SHALL CONTINUE TO ASSIGN THE OPERATION AND INSTALLATION OF PUMPS AND BRAZING AND WELDING ON SCREENS TO MEMBERS OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793. ANY WELDING ON THE PIPES SHALL CONTINUE TO BE ASSIGNED TO MEMBERS OF THE RESPONDENT PLUMBERS' UNION. ALL REMAINING WORK, INCLUDING THE INSTALLATION OF VICTAULIC COUPLINGS, SHALL CONTINUE TO BE ASSIGNED TO MEMBERS OF THE RESPONDENT LABOURERS' UNION.
- (B) IN THE INSTALLATION, OPERATION AND MAINTENANCE OF TEMPORARY AIR AND WATER LINES AT THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO-LOWER NOTCH GENERATING STATION PROJECT, THE COMPLAINANT SHALL CONTINUE TO ASSIGN THE OPERATION OF PUMPS TO MEMBERS OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793. ANY WELDING SHALL CONTINUE TO BE ASSIGNED TO MEMBERS OF THE RESPONDENT PLUMBERS' UNION. ALL REMAINING WORK SHALL CONTINUE TO BE ASSIGNED TO MEMBERS OF THE RESPONDENT LABOURERS' UNION.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

15832-68-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (APPLICANT) V. BAUSCH & LOMB OPTICAL COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: OCTOBER 16, 1969.

1. THE FIRST HEARING IN THIS CASE TOOK PLACE ON MARCH 31, 1969. AT THAT TIME PERSONS REPRESENTING A GROUP OF EMPLOYEES WHO HAD FILED STATEMENTS OF DESIRE WERE PRESENT AND READY TO PROCEED. AT THAT HEARING IT BECAME NECESSARY THAT AN EXAMINER BE

APPOINTED AND, ACCORDINGLY, THE BOARD FOLLOWING ITS USUAL PRACTICE DID NOT PROCEED TO HEAR EVIDENCE RESPECTING THE STATEMENTS OF DESIRE WHICH WERE FILED. AN EXAMINER WAS APPOINTED AND SUBSEQUENTLY, ON JUNE 12TH A FURTHER HEARING WAS HELD. ON THAT DATE AN INQUIRY WAS HELD CONCERNING A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE STATEMENT OF DESIRE WHICH HAD BEEN FILED

B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED.

PURSUANT TO THE HEARING, BY DECISION DATED JULY 11, 1969 THE BOARD CERTIFIED THE APPLICANT AND FOUND THAT

"THE WITNESS WAS UNABLE TO TELL THE BOARD WHERE THIS DOCUMENT ORIGINATED AND WHO PREPARED IT, NOR COULD SHE ADVISE THE BOARD AS TO THE IDENTITY OF THE PERSON WHO BROUGHT THE DOCUMENT FROM THE PLANT."

THE BOARD THEN WENT ON TO FIND THAT THE

"DOCUMENT FILED DOES NOT SATISFY THE REQUIREMENTS OF THIS BOARD."

2. SUBSEQUENT TO THE DECISION OF JULY 11, 1969 AS A RESULT OF CORRESPONDENCE RECEIVED, THE GROUP OF EMPLOYEES MADE A REQUEST FOR A RE-HEARING. THAT REQUEST WAS DENIED ON JULY 30, 1969 BY A DECISION OF THE BOARD.

3. THE BOARD HAS RECEIVED FURTHER CORRESPONDENCE DATED SEPTEMBER 8, 1969 FROM REPRESENTATIVES OF THE GROUP OF EMPLOYEES WHICH STATES INTER ALIA

"1. WE NOW KNOW WHO WROTE THE HEADING ON THE SECOND PETITION THE ONE WITH THE NAMES OF THOSE PERSONS WHO HAD SIGNED A UNION CARD.

2. WE NOW KNOW WHO GOT THE NAMES ON THE PETITION THAT THE WITNESS COULD NOT IDENTIFY.

3. WE HAVE EVIDENCE STATING THAT SOME OF THESE PEOPLE WERE THREATENED INTO SIGNING CARDS SUCH AS, IF YOU DON'T SIGN A UNION CARD YOU WILL LOSE YOUR JOB."

ON THAT BASIS THE GROUP OF EMPLOYEES ASK THAT THE MATTER BE

RE-OPENED, AND THEY ARE SUPPORTED IN THAT REQUEST BY THE RESPONDENT COMPANY IN CORRESPONDENCE DATED SEPTEMBER 19, 1969 AND SEPTEMBER 24, 1969.

4. THE RECORDS OF THE BOARD REVEAL THAT NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING (FORM 5) WAS FILED AT THE RESPONDENT'S PREMISES ON MARCH 14TH, 1969. THAT FORM STATES:

"8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSONS WHO FAILS TO ATTEND.*

*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT."

5. IT IS READILY APPARENT THAT THESE EMPLOYEES ON OR ABOUT MARCH 14, 1969 WERE MADE AWARE OF THE REQUIREMENTS OF THIS BOARD CONCERNING STATEMENTS OF DESIRE. THEY WERE FURTHER IN THE POSITION THAT THE INQUIRY INTO THE STATEMENTS OF DESIRE MIGHT HAVE BEEN CONDUCTED ON MARCH 31, 1969 THE DATE OF THE ORIGINAL HEARING. AS A RESULT OF THE BOARD'S PRACTICE THE GROUP OF EMPLOYEES HAD THE OPPORTUNITY BETWEEN MARCH 31, 1969 AND JUNE 12, 1969 TO OBTAIN THE REQUIRED EVIDENCE.

6. AT NO TIME DID THE GROUP OF EMPLOYEES REPRESENT THAT THEY WERE UNABLE TO OBTAIN THE NECESSARY EVIDENCE FOR

PRESENTATION TO THIS BOARD. SIX MONTHS HAVE ELAPSED SINCE THE ORIGINAL NOTICE TO EMPLOYEES AND APPROXIMATELY TWO MONTHS HAVE ELAPSED SINCE THE APPLICANT WAS CERTIFIED. THIS BOARD HAS HELD THAT AMONG OTHER THINGS THERE IS AN OBLIGATION ON PERSONS SEEKING TO ADDUCE NEW EVIDENCE TO SHOW THAT THE EVIDENCE COULD NOT HAVE BEEN OBTAINED WITH REASONABLE DILIGENCE FOR USE AT THE TRIAL. INTERNATIONAL WOODWORKERS OF AMERICA AND MURRAY BROS. LUMBER CO. LTD. BOARD FILE No. 15289-68-U SEPTEMBER 19, 1969, OLRB.

7. THE THIRD ALLEGATION MADE BY THE GROUP OF EMPLOYEES CONCERNS AN UNFAIR LABOUR PRACTICE. THE PROCEDURE AND THE REQUIREMENTS FOR DEALING WITH IMPROPER OR IRREGULAR CONDUCT WAS SET OUT IN UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL-CIO-CLC AND FLECK MANUFACTURING LIMITED 62 CLLC 1046, CLS 76-860: THE BOARD SAID IN FLECK MANUFACTURING LIMITED THAT

"IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

HAVING REGARD TO THE UNTIMELY NATURE OF THE ALLEGATIONS, AND OF THE REASON GIVEN FOR NOT ADVANCING THEM EARLIER, AND TO THE FACT THAT COPIES OF THE BOARD'S RULES OF PROCEDURE CONTAINING SECTION 48 ARE CIRCULATED TO THE PUBLIC AND ARE READILY AVAILABLE TO COUNSEL, AND TO THE OBVIOUS

AND UNNECESSARY PREJUDICE WHICH WOULD INEVITABLY HAVE RESULTED TO THE APPLICANT IF SUCH ALLEGATIONS HAD BEEN ALLOWED FOR THE FIRST TIME AT THE HEARING, THE BOARD RULED THAT IT WOULD NOT ENTERTAIN THEM."

HAVING REGARD TO THE FORM AND TIME AT WHICH THE ALLEGATIONS ARE MADE AND CONSIDERING THAT NO REPRESENTATIONS HAVE BEEN MADE THAT THE INFORMATION WHICH THE GROUP OF EMPLOYEES NOW SEEKS TO ADDUCE WAS NOT AVAILABLE AT THE HEARING, WE SEE NO REASON TO DEPART FROM THE DECISION IN THE FLECK MANUFACTURING LIMITED CASE SUPRA.

8. THE REQUEST BY THE PARTIES FOR RE-OPENING THIS CASE IS DENIED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION -

SECTION 47A

15941-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ELGIN COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: OCTOBER 16, 1969.

1. THE RESPONDENT, BY LETTER DATED OCTOBER 7, 1969, HAS EXPRESSED OBJECTION TO THE FORM OF THE BALLOT PROPOSED IN THE REPRESENTATION VOTE DIRECTED IN THIS MATTER. REFERENCES MADE TO ¶ 13 OF THE BOARD'S DECISION OF OCTOBER 1, 1969 WHICH STATES THAT "VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH", THERE FOLLOWS A LISTING OF THREE UNIONS.

2. THE RESPONDENT PROPOSES THAT THE BALLOT, IN ORDER TO CONFORM TO THE DIRECTION OF THE BOARD, SHOULD GIVE A CHOICE OF ONE OF THE THREE UNIONS OR NO UNION AND SUGGESTS THAT THE BALLOT BE DESIGNED SO THAT THE VOTERS BE GIVEN AN OPPORTUNITY TO INDICATE THAT THEY DO NOT WISH TO BE REPRESENTED BY ANY UNION.

3. IF, INDEED, THE LANGUAGE USED BY THE BOARD IN ¶ 13 OF ITS DECISION OF OCTOBER 1, 1969 IS OPEN TO THE CONSTRUCTION SUGGESTED, THE BOARD WISHES TO CLARIFY ITS POSITION AND MAKE IT CLEAR THAT SUCH WAS NOT ITS INTENT.

4. IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE, OLRB MONTHLY REPORT, MAY 1969, P. 287, THE BOARD IN ¶ 20 OF THAT DECISION DEALT WITH THE QUESTION OF OFFERING THE VOTERS THE CHOICE OF VOTING "NO TRADE UNION". IN THAT CASE AND UPON THE AGREEMENT OF THE PARTIES, THE CHOICE OF NO TRADE UNION WAS OFFERED ON THE BALLOT. THE BOARD POINTED OUT THAT THIS WAS BEING DONE ON AN EXPERIMENTAL BASIS. THE BOARD WENT ON TO SAY THAT HAVING GIVEN A GREAT DEAL OF THOUGHT TO THE PROBLEMS WHICH MIGHT BE ENCOUNTERED, THE BOARD WAS OF THE OPINION THAT THE DISADVANTAGES INVOLVED IF THIS SYSTEM WERE TO BE ADOPTED AS A GENERAL PRACTICE FAR OUTWEIGH ANY ADVANTAGES THAT MIGHT FLOW FROM THE SYSTEM AND STATED "THE BOARD WISHES TO PLACE ITSELF ON RECORD THAT IT DOES NOT INTEND TO FOLLOW THIS SYSTEM IN FUTURE APPLICATIONS UNDER SECTION 47A".

5. IN VIEW OF THE FOREGOING, THE BOARD DENIES THE RESPONDENT'S REQUEST TO ALTER THE PROPOSED BALLOT.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

16621-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) V. DACON CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

7. THE APPLICANT HAS APPLIED FOR ITS USUAL CRAFT UNIT CONSISTING OF CARPENTERS AND CARPENTERS' APPRENTICES IN BOARD AREAS No. 30 AND No. 31. IT IS NOT THE PRACTICE OF THE BOARD TO JOIN TWO GEOGRAPHIC AREAS TOGETHER IN ONE BARGAINING UNIT. IN ANY EVENT, THE EMPLOYEES IN QUESTION WERE ALL WORKING IN BOARD AREA No. 30 WITH THE POSSIBLE EXCEPTION OF ONE EMPLOYEE WHO MAY HAVE BEEN WORKING IN BOARD AREA No. 29 ON THE DATE OF THE MAKING OF THE APPLICATION. THE RESPONDENT SEEKS TO INCLUDE CARPENTERS' HELPERS IN THE BARGAINING UNIT. IT HAS NEVER BEEN THE POLICY OF THE BOARD TO INCLUDE CARPENTERS' HELPERS IN A CARPENTERS' UNIT. RATHER, SUCH PERSONS FORM PART OF A CONSTRUCTION LABOURERS' UNIT.

8. IT SHOULD BE CLEARLY UNDERSTOOD THAT THE BOARD MUST MAKE ITS DECISION WITH RESPECT TO INCLUSIONS IN OR EXCLUSIONS FROM THE BARGAINING UNIT ON THE BASIS OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT. ADMITTEDLY, THAT EVIDENCE IN SOME RESPECTS IS NOT AS COMPLETE AS IT MIGHT BE BUT, NEVERTHELESS, THE BOARD'S DECISION MUST REST ON THAT EVIDENCE SUCH AS IT IS. AFTER CAREFULLY CONSIDERING THE REPORT, WE FIND:

- (1) THAT HENDRIK JONKMAN IS A PERSON WHO EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR

RELATIONS ACT AND IS ACCORDINGLY NOT INCLUDED IN THE BARGAINING UNIT. REFERENCE IS MADE TO SOVEREIGN CONSTRUCTION COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 24; PRE-CON MURRAY LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 328; UNI-FORM BUILDERS LTD. CASE, O.L.R.B. MONTHLY REPORT, MARCH 1967, P. 1019.

- (2) THAT WILLIAM CURRY AND ALBERT JONKMAN WERE EMPLOYED AS CARPENTERS ON THE DATE OF THE MAKING OF THE APPLICATION AND ACCORDINGLY ARE INCLUDED IN THE BARGAINING UNIT. WITH RESPECT TO WILLIAM CURRY IT IS NOTED THAT AROUND THE DATE OF THE MAKING OF THE APPLICATION HE STATED THAT HE SPENT 90 PER CENT OF HIS TIME ON CARPENTRY WORK, THAT HE HAS NEVER WORKED AS A CARPENTERS' HELPER AND THAT HE HAS A FULL BOX OF CARPENTERS' TOOLS;
- (3) THAT EDGAR HAWS, CHARLES DIXON AND JOHN JONKMAN WERE EMPLOYED AS LABOURERS AND/OR CARPENTERS' HELPERS ON THE DATE OF THE MAKING OF THE APPLICATION AND ACCORDINGLY ARE NOT INCLUDED IN THE BARGAINING UNIT.

(OCTOBER 9, 1969).

16630-69-R: LOCAL UNION 221, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. TOSHACK BROTHERS (PRESCOTT) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

FURTHER, THOMAS RUTLEY, ALTHOUGH A PLUMBER BY TRADE HAD NOT BEEN WORKING AS SUCH PRIOR TO AND ON THE DATE OF THE MAKING OF THE APPLICATION AND IS NOT INCLUDED IN THE BARGAINING UNIT. SHOULD MR. RUTLEY BE EMPLOYED AS A PLUMBER AT SOME FUTURE TIME THEN OF COURSE HE WOULD FALL WITHIN THE ABOVE DESCRIBED BARGAINING UNIT.

IT SHOULD BE NOTED THAT ALTHOUGH A STATEMENT OF OBJECTIONS TO THE APPLICATION FOR CERTIFICATION WAS FILED WITH THE BOARD, SIGNED BY ELEVEN EMPLOYEES, OF WHICH TEN CORRESPOND TO NAMES ON THE LIST OF EMPLOYEES FILED BY THE EMPLOYER, NONE OF THE ELEVEN PERSONS IS CLAIMED BY THE APPLICANT AS A MEMBER.

ACCORDINGLY, EVEN IF FULL WEIGHT WERE GIVEN TO THE STATEMENT OF OBJECTIONS THE MEMBERSHIP POSITION OF THE APPLICANT COULD NOT BE AFFECTED. IN THESE CIRCUMSTANCES THE BOARD DOES NOT DEEM IT NECESSARY TO HOLD A HEARING IN CONNECTION WITH THE STATEMENT OF OBJECTIONS. IT SHOULD ALSO BE POINTED OUT THAT FOLLOWING THE RELEASE OF THE REPORT OF THE EXAMINER, COUNSEL FOR THE RESPONDENT INFORMED THE BOARD THAT HE WAS NOT ASKING FOR A HEARING.

(OCTOBER 3, 1969).

16760-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT)
V. SANDERCOCK CONSTRUCTION LIMITED (RESPONDENT).

6. ALTHOUGH THE APPLICANT HAS APPLIED FOR AN ALL EMPLOYEE UNIT IT APPEARS FROM THE MATERIAL FILED WITH THE BOARD THAT THE RESPONDENT EMPLOYED ONLY EQUIPMENT OPERATORS, TRUCK DRIVERS AND MECHANICS ON THE DATE OF THE MAKING OF THE APPLICATION. HOWEVER IT APPEARS THAT THE MECHANICS IN QUESTION ARE EMPLOYED IN THE RESPONDENT'S YARD AND NOT IN THE FIELD. SUCH EMPLOYEES CANNOT BE INCLUDED IN A CONSTRUCTION INDUSTRY BARGAINING UNIT BECAUSE THEY ARE NOT ENGAGED IN WORK AT A JOB SITE (SEE GAGNE R & G INCORPORATED CASE, OLRB M.R., NOV. 1967, P. 799). FURTHER IT APPEARS THAT CONSTRUCTION LABOURERS ARE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE WINTER & SON CASE, OLRB, M.R., FEB. 1967, P. 889, AND SECTION 6(1) OF THE LABOUR RELATIONS ACT THE BOARD FURTHER FINDS THAT ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON AND ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(OCTOBER 6, 1969).

16789-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. MOYER CONSTRUCTION CO. LTD.
(RESPONDENT).

6. THE APPLICANT IS PROPOSING A UNIT CONSISTING OF CARPENTERS, APPRENTICES, HELPERS AND COMMON LABOURERS, WHEREAS THE RESPONDENT PROPOSES A UNIT CONSISTING OF CARPENTERS ONLY. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT INDICATES THAT THE RESPONDENT EMPLOYS BOTH CARPENTERS AND LABOURERS. THE APPLICANT HAS IN THE PAST BEEN CERTIFIED FOR ALL EMPLOYEES AND ALSO FOR UNITS CONSISTING OF CARPENTERS, APPRENTICES AND LABOURERS IN THE AREA HERE UNDER CONSIDERATION. THE BOARD DOES NOT DISTINGUISH BETWEEN A CARPENTER'S HELPER AND A LABOURER, WHICH CLASSIFICATIONS ARE LUMPED TOGETHER

IN THE TERM CONSTRUCTION LABOURER. FURTHER IN THE CONSTRUCTION INDUSTRY THE BOARD DOES NOT DISTINGUISH PERSONS EMPLOYED ON A PART-TIME OR TEMPORARY BASIS FROM THOSE EMPLOYED ON A MORE REGULAR BASIS. HAVING REGARD TO THE PRINCIPLE ENUNCIATED IN THE A.K. PENNER AND SONS LTD. CASE, OLRB, M.R., OCT 1966, P. 493 AND TO SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(OCTOBER 14, 1969).

EMBER, 1969



ONTARIO

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ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER 1969

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

15813-68-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 12-L (APPLICANT) V. COMMERCIAL PAPERS LIMITED (RESPONDENT).

UNIT: "ALL OFFSET PRESSMEN, THEIR APPRENTICES AND HELPERS AND ALL STRIPPERS, PLATEMAKERS AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT IN ITS PLANT ON PARLIAMENT STREET AT TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN." (19 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 939).

16264-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT ST. THOMAS, SAVE AND EXCEPT MEAT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A COOPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPORT OF THE EXAMINER DATED JULY 31, 1969 AND TO THE AGREEMENTS OF COUNSEL).

(SEE INDEXED ENDORSEMENT PAGE 947).

16293-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (APPLICANT) V. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT SAULT STE. MARIE, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER." (4 EMPLOYEES IN THE UNIT).

16292-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (APPLICANT) V. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN SAULT ST. MARIE, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (28 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 950).

16345-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. ACME RULER COMPANY LIMITED (RESPONDENT).

- AND -

16347-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. ACME RULER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

(CONSOLIDATED APPLICATIONS)

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

(APPLICANT CERTIFIED)

UNIT #2: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT PRODUCTION CONTROL MANAGER, PERSONS ABOVE THE RANK OF PRODUCTION CONTROL MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

(APPLICATION DISMISSED)

(SEE INDEXED ENDORSEMENT PAGE 952).

16680-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HYDRO ELECTRIC COMMISSION OF NORTH BAY (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, EMPLOYEES IN THE PERSONNEL DEPARTMENT, SECRETARIES TO THE MANAGER AND THE ASSISTANT MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16719-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWN OF FOREST (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE PUBLIC WORKS MANAGER AND ROADS SUPERINTENDENT, PERSONS ABOVE THE RANK OF PUBLIC WORKS MANAGER AND ROADS SUPERINTENDENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 967).

16746-69-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL #151 (APPLICANT) v. THE COCHRANE-IROQUOIS FALLS BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE DISTRICT OF COCHRANE SAVE AND EXCEPT THE SUPERINTENDENT OF BUSINESS AFFAIRS." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND HAVING REGARD TO THE DECISION OF THE BOARD IN OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL #151 v. THE COCHRANE-IROQUOIS FALLS CASE, BOARD FILE #16138-69-R DATED JUNE 10TH, 1969)

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SECRETARY TO THE SUPERINTENDENT OF BUSINESS AFFAIRS AND THE ACCOUNTANT ARE NOT INCLUDED IN THE BARGAINING UNIT).

16755-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. YORK SANITATION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN YORK COUNTY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (17 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 968).

16773-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 837 (APPLICANT) v. ATCO QUEBEC LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16775-69-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. DOMINION GLASS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO EACH OF THE FOLLOWING: PLANT MANAGER, MANAGER OF ENGINEERING SERVICES, PERSONNEL MANAGER, PLANT ACCOUNTANT, MANAGER OF CENTRAL MOULD SHOP, Q. & S. DEPARTMENT, AND MANAGER OF DESIGN DEVELOPMENT; NURSES, SECURITY GUARDS, SALESMEN, SALES OFFICE PERSONNEL, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS IN A CO-OPERATIVE UNIVERSITY TRAINING PLAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164." (74 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES DATED NOVEMBER 6TH, 1969).

16809-69-R: WINDSOR TYPOGRAPHICAL UNION, LOCAL 553, I.T.U. (INTERNATIONAL TYPOGRAPHICAL UNION) (APPLICANT) V. CHATHAM DAILY NEWS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16845-69-R: BRANTOX DRIVERS' ASSOCIATION (APPLICANT) V. BRANTOX HOLDINGS LIMITED (RESPONDENT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRODHAGEN, BURGESSVILLE, GUELPH AND PARKHILL, SAVE AND EXCEPT DRIVER SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF DRIVER SUPERVISOR AND FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (40 EMPLOYEES IN THE UNIT).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS DISPATCHERS ARE NOT INCLUDED IN THE BARGAINING UNIT)

(SEE INDEXED ENDORSEMENT PAGE 976).

16859-69-R: SERVICE EMPLOYEES' UNION, LOCAL 210 AFFILIATED WITH SERVICE EMPLOYEES' INTERNATIONAL UNION AFL-CIO-CLC (APPLICANT) V. HURON COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF HURON ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CHIEF ENGINEER, CAFETERIA SUPERVISOR, CHIEF CUSTODIANS EMPLOYED IN SECONDARY SCHOOLS AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CAFETERIA SUPERVISOR AND CHIEF CUSTODIAN EMPLOYED IN SECONDARY SCHOOLS." (49 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16866-69-R: FEDERAL UNION LOCAL 24712, C.L.C. (APPLICANT) V. WELLAND CHEMICAL OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

(THE BOARD NOTED THE WRITTEN AGREEMENT RECORDED WITH THE EXAMINER APPOINTED IN THIS MATTER THAT THERE ARE TWELVE PERSONS IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT).

16873-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE WATERLOO COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL TEACHERS, COUNSELLORS, AND LIBRARIANS EMPLOYED BY THE RESPONDENT AT ITS ADULT EDUCATION CENTRES, SAVE AND EXCEPT CO-ORDINATORS, ASSISTANT CO-ORDINATORS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (80 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16881-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL 721 (APPLICANT) V. PRESCON OF CANADA LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16888-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT BURLINGTON, ONTARIO REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (48 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16891-69-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478, A.F.L., C.I.O., C.L.C. (APPLICANT) V. ST. JOSEPH'S COLLEGE AND MOTHERHOUSE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, MEMBERS OF THE CONGREGATION OF THE SISTERS OF ST. JOSEPHS, TEACHING STAFF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

16896-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GILLIN ENGINEERING & CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16897-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL 1450 (APPLICANT) V. ARDEVAN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16898-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ROLAND LARIVIERE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR

EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16904-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA LOCAL UNION 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DEHAAN CARTAGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

16907-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF VICTORIA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS ROADS AND BRIDGES DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, ENGINEERING ASSISTANTS, ADMINISTRATIVE ASSISTANTS, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1167." (26 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16909-69-R: LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. GREENSPOON BROS. LTD. (RESPONDENT).

UNIT: "ALL LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (15 EMPLOYEES IN THE UNIT).

16910-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LUMBER AND SAWMILL WORKERS, LOCAL UNION 2754 (APPLICANT) V. HOGAN LAKE TIMBER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AT PEMBROKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (36 EMPLOYEES IN THE UNIT).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS SCALERS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT).

16911-69-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL No. 10 (APPLICANT) V. GOLDCRAFT PRINTERS LIMITED (RESPONDENT).

UNIT: "ALL PRESSMEN, ASSISTANT PRESSMEN AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OWNER, NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSES OF CLARITY, IT IS TO BE NOTED THAT ALL PERSONS ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER ARE CLASSIFIED BY THE RESPONDENT AS ASSISTANT LITHOGRAPHY PRESSMEN.).

16918-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. D. COSENTINO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16951-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INTRUSION-PREPAKT LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL DIVERS AND TENDERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

16952-69-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION # 1071 (APPLICANT) V. THE OVERHEAD DOOR COMPANY OF PETERBOROUGH, ONTARIO (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16954-69-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE BOARD OF WATER COMMISSIONERS OF THE CORPORATION OF THE TOWN OF WALLACEBURG (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT SUPERVISOR, AND THOSE ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

16957-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. MACDONALDS CONSOLIDATED LIMITED (RESPONDENT).

UNIT: "ALL WAREHOUSE EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, BUYERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16958-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INDALPRIME LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND EMPLOYEES ENGAGED IN FIELD ERECTION AND INSTALLATION WORK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (43 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16961-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) V. PAUL DAIGNAULT INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16963-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RENFREW COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (90 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS SAVE AND EXCEPT SUPERVISOR AND THOSE ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (80 EMPLOYEES IN THE UNIT).

16978-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. COMET ERECTORS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16979-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. KENWOOD CONSTRUCTION SERVICES (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16992-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 (APPLICANT) V. OMEGA INVESTMENTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16999-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. OMEGA INVESTMENTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17000-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CYRUS J. MOULTON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

17001-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. M. P. LUNDY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

16606-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. KITCHENS OF SARA LEE (CANADA) LTD. (RESPONDENT) V. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA LOCAL 264 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CHINGACOUSY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RETAIL CLERKS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	49
NUMBER OF PERSONS WHO CAST BALLOTS	49
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
RETAIL, WHOLESALE AND DEPARTMENT STORE	
UNION, AFL:CIO:CLC	32
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
BAKERY & CONFECTIONERY WORKERS' INTER-	
NATIONAL UNION OF AMERICA LOCAL 264	17

(APPLICANT CERTIFIED)

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF CHINGACOUSY, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER."

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3

(BALLOT BOX SEALED)

(THE APPLICATION OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 DISMISSED).

16840-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. T. ROBERTS & SONS LTD (VALLEY VIEW DAIRY) (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT METROPOLITAN TORONTO." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	1

16862-69-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. SPUN-METALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, DESIGNER-ENGINEERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	36
NUMBER OF PERSONS WHO CAST BALLOTS	35
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	24
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	11

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15959-69-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARTERS PUBLISHING COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS PRESENTLY COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND BRAMPTON TYPOGRAPHICAL UNION No. 987; BRAMPTON PRINTING PRESS MEN AND ASSISTANTS' No. 217; BRAMPTON INTERNATIONAL BROTHERHOOD OF BOOK BINDERS AND BINDERY WOMEN, LOCAL 159 OF BRAMPTON; TORONTO STEREOTYPERS AND ELECTROTYPERS UNION, LOCAL 21; TORONTO MAILERS UNION No. 5-I.T.U.." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS		4
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	1	

16481-69-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. CANRON LIMITED (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT'S ELECTRICAL DIVISION AT NAPANEE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (37 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON		
VOTERS' LIST		46
NUMBER OF PERSONS WHO CAST BALLOTS		46
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	36	
NUMBER OF BALLOTS MARKED AGAINST		
INTERVENER	10	

16493-69-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS, UNION LOCAL 67 OF U.H.C. & M.W.I.U. - C.L.C. (APPLICANT) V. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE RESPONDENT'S LENS WAREHOUSE DEPARTMENT AT 80, 90-92 SHERBOURNE STREET, TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

16794-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, LOCAL 325, ETOBICOKE ONTARIO AND VICINITY (APPLICANT) V. NATIONAL STARCH AND CHEMICAL Co. (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	23
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

16312-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SUPERTEST PETROLEUM CORPORATION, LIMITED (RESPONDENT) V. OIL CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (INTERVENER). (30 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 951).

16313-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. HARROLD'S COAL COMPANY LIMITED (RESPONDENT) V. FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER). (2 EMPLOYEES).

16666-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. WORKER'S CO-OP. (RESPONDENT) V. RETAIL CLERKS UNION LOCAL 409, CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER).

- AND -

16667-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. WORKER'S CO-OP. (RESPONDENT) V. RETAIL CLERKS UNION LOCAL 409, CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER). (7 EMPLOYEES).

(CONSOLIDATED APPLICATIONS).

16727-69-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (RESPONDENT). (61 EMPLOYEES).

16798-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PREFAB CONSTRUCTION COMPANY (RESPONDENT). (24 EMPLOYEES).

16828-69-R: T. E. L. COUNCIL OF UNIONS (APPLICANT) V. STANDARD PAVING LIMITED (DIVISION OF S. P. M. & MATERIALS LIMITED) (RESPONDENT). (20 EMPLOYEES).

16861-69-R: INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS (APPLICANT) V. COOPER-WEEKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 501 ALLIANCE AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (269 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 974).

16869-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE AUSTIN COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

16880-69-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION LOCAL 67. U.H.C. & M.W.I.U.-C.L.C. (APPLICANT) V. AOCO LIMITED (RESPONDENT). (21 EMPLOYEES).

16902-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. RAINBOW CONCRETE INDUSTRIES LIMITED (RESPONDENT). (NO EMPLOYEES).

16917-69-R: CARPENTERS UNION 249 KINGSTON ONT. (APPLICANT) V. SCHWENGER CONST. LTD. (RESPONDENT). (4 EMPLOYEES).

16919-69-R: THE SYNDICATE OF CONSTRUCTION WORKERS' UNION OF THE OTTAWA VALLEY (C.N.T.U.) (APPLICANT) V. LEONARD G. WEBER CONSTRUCTION (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #2). (7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 981).

16931-69-R: NIAGARA PENINSULA PRINTING PRESSMEN AND ASSISTANTS' UNION No. 425, A SUBORDINATE UNION OF INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. LINCOLN GRAPHICS LIMITED (RESPONDENT). (24 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 983).

16964-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. SEVEN UP (ONTARIO) LIMITED (RESPONDENT). (79 EMPLOYEES).

16972-69-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V. BRANTOX HOLDINGS LIMITED (RESPONDENT). (11 EMPLOYEES).

16985-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. C & T REINFORCING STEEL CO. LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 983).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

16588-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)
V. LIQUID CARBONIC CANADIAN CORPORATION LIMITED (RESPONDENT) V. GROUP
OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT
DEPOT SUPERVISOR, PERSONS ABOVE THE RANK OF DEPOT SUPERVISOR,
OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS
PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

16621-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 1758 (APPLICANT) V. DACON CONSTRUCTION LIMITED (RESPONDENT)
V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF
THE RESPONDENT IN THE TOWNSHIPS OF AUGUST AND EDWARDSBURG IN THE
COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS
ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

16652-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) V.
A. J. FRANK & SON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

16807-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. METRO WINDSOR CATERING CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS FOOD SERVICE AND CAFETERIA DIVISION AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	12

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

16695-69-R: CANADIAN BUS DRIVERS UNION (APPLICANT) V. TRAILWAYS OF CANADA LIMITED (RESPONDENT). (50 EMPLOYEES).

16955-69-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HARDEE FARMS INTERNATIONAL LTD. (RESPONDENT). (3 EMPLOYEES).

16959-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MAC CONSTRUCTION COMPANY WALLACEBURG LTD. (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 880 (INTERVENER). (3 EMPLOYEES).

16962-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 18 (APPLICANT) V. CIOCI AND DIXIE CONSTRUCTION CO. LIMITED (RESPONDENT). (10 EMPLOYEES).

16983-69-R: ROLPH-CLARK-STONE RIDEAU PLANT EMPLOYEES ASSOCIATION
(APPLICANT) V. ROLPH-CLARK-STONE LIMITED (RESPONDENT). (27 EMPLOYEES).

17025-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
183 (APPLICANT) V. SKRYPEK CONST. LTD. (RESPONDENT). (6 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING NOVEMBER

16708-69-R: MARGARET MCNICOL (APPLICANT) V. TEXTILE WORKERS UNION OF
AMERICA A.F.L.-C.I.O., C.L.C. (RESPONDENT) V. HANES OF CANADA LIMITED
(INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF HANES OF CANADA LIMITED IN METROPOLITAN
TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS
OF FOREMAN AND FORELADY, CHIEF ENGINEER, OFFICE AND SALES STAFF, HOME
WORKERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER
WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (141
EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	96
NUMBER OF PERSONS WHO CAST BALLOTS	96
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	92

16889-69-R: HAROLD LONDON (APPLICANT) V. LAUNDRY AND LINEN DRIVERS
AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTER-
NATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS, OF AMERICA (RESPONDENT). (2 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 987).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
NOVEMBER

16518-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. THE WESTERN
ONTARIO DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA A.F.L.-C.I.O.-C.L.C. (RESPONDENT). (WITHDRAWN).

16519-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. JAMES B.
ATTRILL, WILLIAM BROWN, JOHN RODREGUES (RESPONDENT). (WITHDRAWN).

16520-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. CHRIS FISHER, MANUEL MENDES, AND NOE OLIVEIRA (RESPONDENT). (WITHDRAWN).

16521-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (RESPONDENT). (WITHDRAWN).

16522-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. JAMES B. ATTRILL, WILLIAM BROWN, JOHN RODREGUES (RESPONDENT). (WITHDRAWN).

16523-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. DAVID NOBLE AND THE WESTERN ONTARIO DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA A.F.L.-C.I.O.-C.L.C. (RESPONDENT). (WITHDRAWN).

16524-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. CHRIS FISHER, MANUEL MENDES AND NOE OLIVEIRA (RESPONDENT). (WITHDRAWN).

16525-69-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. PAUL SANTY AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (RESPONDENT). (WITHDRAWN).

16966-69-U: PITTS-McNAMARA-ATLAS-- A JOINT VENTURE OF C.A. PITTS CONSTRUCTION (ONTARIO) LTD., McNAMARA CORPORATION LIMITED AND ATLAS CONSTRUCTION CO LIMITED (APPLICANT) V. CERTAIN EMPLOYEES OF THE APPLICANT NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

16969-69-U: ROY HAGERMAN AUTHORIZED ESSO COMMERCIAL SERVICE DEALER (APPLICANT) V. ALBERT WALKER, JOSEPH B. EDWARDS, ANGEL IRIBARREN (RESPONDENTS). (WITHDRAWN).

17014-69-U: THE OSHAWA WHOLESALE LIMITED THE ONTARIO PRODUCE COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

17015-69-U: THE OSHAWA WHOLESALE LIMITED THE ONTARIO PRODUCE COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

16677-69-U: TORONTO CONSTRUCTION ASSOCIATION, CANADA BUILDING MATERIAL LIMITED, COMMUNITY BUILDING SUPPLIES LIMITED, DUFFERIN MATERIALS & CONSTRUCTION LTD., KILMER VAN NOSTRAND CO. LIMITED, McCORD & COMPANY, A DIVISION OF S.P. & M. MATERIALS LIMITED SUCCESSOR TO S. McCORD & Co. LTD., PREMIER CONCRETE PRODUCTS, DIVISION OF LAKE ONTARIO CEMENT LIMITED SUCCESSOR TO PREMIER BUILDING MATERIALS (DIVISION OF LAKE ONTARIO CEMENT LIMITED), RICHVALE REDI-MIX LIMITED (APPLICANTS) V. ALEX MAIN AND CLIVE BALLENTINE (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 990).

16729-69-U: CANADIAN ACME SCREW & GEAR LIMITED (APPLICANT) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION 984 (RESPONDENT). (WITHDRAWN).

16802-69-U: THE AMALGAMATED JEWELRY WORKERS' UNION, LOCAL 33, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. PRE-MET MANUFACTURERS LTD. AND JACK GOODMAN (RESPONDENT). (WITHDRAWN).

16852-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CONCORDIA CLUB LIMITED (RESPONDENT). (GRANTED).

16853-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 (APPLICANT) V. EAST MALL I.G.A. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 993).

16968-69-R: ROY HAGERMAN AUTHORIZED ESSO COMMERCIAL SERVICE DEALER (APPLICANT) V. ALBERT WALKER, JOSEPH B. EDWARDS, ANGEL IRIBARREN (RESPONDENTS). (WITHDRAWN).

17016-69-U: THE OSHAWA WHOLESALE LIMITED THE ONTARIO PRODUCE COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

16017-69-U: THE OSHAWA WHOLESALE LIMITED THE ONTARIO PRODUCE COMPANY LIMITED (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING NOVEMBER

16732-69-U: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254 (COMPLAINANT) V. THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC) (RESPONDENT). (DISMISSED).

16823-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. METRO CATERING LIMITED (RESPONDENT). (WITHDRAWN).

16824-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. METRO CATERING LIMITED (RESPONDENT). (WITHDRAWN).

16837-69-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. AUDIO TRANSFORMER COMPANY LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 994).

16849-69-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. DILAWRI MOTOR SALES LIMITED (RESPONDENT). (WITHDRAWN).

16986-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. SCARBOROUGH CENTENARY HOSPITAL (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

16876-69-M: CENTRAL PARK LODGES OF CANADA LIMITED (COMPANY) AND LONDON AND DISTRICT BUILDING SERVICE WORKERS UNION LOCAL 220 B.S.E.I.U., A.F. L., C.I.O., C.L.C. (UNION). (GRANTED).

16899-69-M: THE PARKS AND RECREATION COMMISSION FOR THE CITY OF ST. CATHARINES (EMPLOYER) AND CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL 1034 (UNION). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING NOVEMBER

15941-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE ELGIN COUNTY BOARD OF EDUCATION (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISOR OF TRANSPORTATION, SUPERVISOR OF BUILDINGS AND MAINTENANCE, ASSISTANT SUPERVISOR OF BUILDINGS AND MAINTENANCE, SUPERVISING CUSTODIAN, HIGH SCHOOL HEAD CUSTODIANS, BUS SUPERVISORS AND PERSONS ABOVE THOSE RANKS."

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

145

NUMBER OF PERSONS WHO CAST BALLOTS

107

NUMBER OF BALLOTS MARKED IN FAVOUR OF
APPLICANT

103

NUMBER OF BALLOTS MARKED IN FAVOUR OF
THE ST. THOMAS CARETAKERS' ASSOCIA-
TION LOCAL 332, CANADIAN UNION OF
PUBLIC EMPLOYEES

4

NUMBER OF BALLOTS MARKED IN FAVOUR OF
CANADIAN UNION OF PUBLIC EMPLOYEES
LOCAL UNION NUMBER 35 (CENTRAL ELGIN

DISTRICT HIGH SCHOOL CARETAKERS' UNIT) 0

APPLICATIONS UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY
TRADE UNION MEMBER) DISPOSED OF DURING NOVEMBER

16749-69-M: WILLIAM HUGHES (COMPLAINANT) V. INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC MEMBERSHIP CARD. LOCAL UNION #566 (RESPONDENT). (DISMISSED).

16838-69-M: JAMES G. WARD (COMPLAINANT) V. LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING
NOVEMBER

16470-69-M: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 131 (APPLICANT) V. THE BORDEN COMPANY LTD. (RESPONDENT) (DISMISSED).
(SEE INDEXED ENDORSEMENT PAGE 1010).

16854-69-M: L.U. 548 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. THE GUELPH BOARD OF LIGHT & HEAT COMMISSIONERS (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

16324-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (TRADE UNION) V. LAMBTON LANDS LIMITED (EMPLOYER).
(SEE INDEXED ENDORSEMENT PAGE 1013).

JURISDICTIONAL DISPUTE

16237(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCALS 27, 3233, 681, 3227, 666 AND 1963 AND THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (RESPONDENTS).
(SEE INDEXED ENDORSEMENT PAGE 1015).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

16707-69-R: NIAGARA PENINSULA PRINTING PRESSMEN AND ASSISTANTS' UNION No. 425, SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. REWBURY PRINTING COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

16873-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE WATERLOO COUNTY BOARD OF EDUCATION (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

15813-68-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION
LOCAL 12-L (APPLICANT) v. COMMERCIAL PAPERS LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J.
O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: NORMAN H. GRAY, T.E. ARMSTRONG FOR
THE APPLICANT; W. GIBSON GRAY Q.C., K. S. DUNCAN,
V. T. GRIFFITHS FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: NOVEMBER 5, 1969.

1. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER IN
THIS MATTER THE BOARD CONSIDERED THE ORAL REPRESENTATIONS OF THE
PARTIES AT A HEARING FOR THAT PURPOSE. SUBSEQUENTLY, ON SEPTEMBER
30TH, THE BOARD CONDUCTED A VIEW OF THE RESPONDENT'S PREMISES TO
EXAMINE THE OPERATIONS OF THE RESPONDENT RELEVANT TO THE ISSUE IN
THIS APPLICATION. THE APPLICANT HAS APPLIED TO REPRESENT AS BAR-
GAINING AGENT ALL OFFSET PRESSMEN, THEIR APPRENTICES, FEEDERS AND
HELPERS AND ALL STRIPPERS, PLATEMAKERS AND THEIR APPRENTICES EM-
PLOYED BY THE RESPONDENT AT ITS PARLIAMENT STREET PLANT AT TORONTO.
THE RESPONDENT OBJECTED TO THE APPLICANT OBTAINING A CRAFT UNIT AND
SUBMITTED THAT THE APPROPRIATE BARGAINING UNIT, HAVING REGARD TO
THE NATURE OF THE RESPONDENT'S BUSINESS, WAS AN "ALL EMPLOYEE UNIT."
THE RESPONDENT IS PRIMARILY ENGAGED IN THE MANUFACTURE OF BUSINESS
FORMS.

2. THE EVIDENCE DISCLOSES THAT THE PRESSROOM OCCUPIES A
MAJOR PORTION OF THE GROUND FLOOR AREA OF THE RESPONDENT'S PREMISES.
OTHER LITHOGRAPHIC PREPARATION SUCH AS PLATEMAKING, STRIPPING, AND
CAMERA WORK IS CARRIED OUT IN AREAS ADJACENT TO THE PRESSROOM. THE
RESPONDENT OPERATES SIX ASHTON PRESSES, ONE OF WHICH IS A RUBBER
PRESS WITHOUT A LITHOGRAPHIC UNIT BUT WITH OTHER UNITS SUCH AS HOLE
PUNCH AND REWIND; THE OTHER FIVE PRESSES HAVE EITHER ONE OR TWO
LITHOGRAPHIC UNITS TOGETHER WITH RUBBER UNITS, FILE HOLE PUNCH, LINE
HOLE PUNCH, SLIT WHEEL AND CROSS PERFORATING, REWIND AND ONE OF
THESE FIVE ALSO HAS A FOLDER UNIT. THERE ARE 42 UNITS INVOLVED ON
THE PRESSES AS A WHOLE, AND OF THOSE UNITS 8 ARE LITHOGRAPHIC UNITS.
MR. WILLIAMS, AN APPRENTICE PRESSMAN, SAID THAT FOR THE FIRST SIX
MONTHS OF HIS EMPLOYMENT HE WORKED ON COLLATORS. HE WAS THEN
TRAINED BY ANOTHER EMPLOYEE ON THE RUBBER PRESS FOR ABOUT TWO
MONTHS BEFORE OPERATING IT ON HIS OWN. THEN HE HAD ONE WEEK'S TRAIN-
ING ON A "LITHO" PRESS AND NOW OPERATES THE PRESS HIMSELF. HE SPENDS
AT LEAST 7½ HOURS DAILY IN RUNNING, MAKING READY AND WASH UP ON THE

PRESS. DURING THE MAKE-READY TIME HE PUTS ON THE LITHOGRAPHIC PLATES ON THE CYLINDERS THEN, DEPENDING ON THE JOB TO BE RUN, HE INSERTS THE NUMBERS, ADJUSTS THE UNITS TO MAKE HOLES AND SLITS. HE DOES SOME MAINTENANCE ON THE PRESS. ON ONE OCCASION, SINCE HE HAS WORKED ON THE PRESS, HE WENT UPSTAIRS TO HELP OUT ON COLLATORS AND HAD DONE SOME OVERTIME WORK ON COLLATORS AND ALSO THOUGHT THE OTHER PRESSMEN HAVE DONE SO AS WELL, BUT NOT ANY MORE OFTEN THAN HE. HIS SUPERVISOR IS THE FOREMAN OF THE PRESSROOM.

3. MR. MANION HAS BEEN EMPLOYED BY THE RESPONDENT AS A JOURNEYMAN PRESSMAN FOR FIVE YEARS. THE PRESS THAT HE OPERATES HAS TWO "LITHO" UNITS ON IT AS WELL AS THE OTHER TYPES OF UNITS. HE SPENDS ABOUT HALF AN HOUR PER DAY IN MAKING READY AND RUNNING THE PRESS. THE AVERAGE MAKE-READY TIME IS ABOUT THREE HOURS DEPENDING ON THE ORDER TO THE RUN. HE REPORTS TO THE FOREMAN OF THE PRESSROOM AND DOES ALL HIS WORK IN THE PRESSROOM. IN THE TRADE HE TESTIFIED THAT THE ASHTON PRESS IS KNOWN AS A WEB OFF-SET ROTARY BUSINESS FORM PRESS. HE SAID THAT THE MOST DIFFICULT ASPECT OF HIS JOB WAS THE NUMBERING OF FORMS AND A MAKE-READY PORTION APPLICABLE TO AN INSURANCE FORM WOULD TAKE LONGER THAN THE NORMAL MAKE-READY TIME. ABOUT TWENTYFIVE PER CENT OF HIS TIME WAS HIS ESTIMATE APPLICABLE TO FIXING LITHOGRAPHIC PLATES ON THE PRESS. IN SOME RUNS THE PLATES MAY BE ALL LITHOGRAPHIC, OR ALL RUBBER, OR HALF OF EACH. THE MIX APPARENTLY DEPENDS ON THE JOB. HE SAID THAT RUBBER PLATES TAKE LONGER TO INSTALL THAN LITHOGRAPHIC.

4. MR. DUNCAN, VICE-PRESIDENT PRODUCTION, FOR THE RESPONDENT, WITH THE ASSISTANCE OF THE PRESSROOM FOREMAN PREPARED A SURVEY OF THE MAKE-READY TIME AND RUNNING TIME WHICH INDICATED FROM THE COMPANY'S RECORDS THAT 43.2 PER CENT OF THE TOTAL WAS SPENT IN MAKING READY AND 56.8 PER CENT IN RUNNING. FURTHER, AN ANALYSIS OF THE MAKE-READY PORTION SHOWED THAT OF THE CHARGEABLE MAKE-READY TIME, 23.7 PER CENT WAS ON THE "LITHO" SECTION OF THE PRESSES AND 76.3 PER CENT ON THE LETTER PRESS, NUMBERING, PUNCHING AND PERFORATING PORTIONS. HE STATED THAT HE COULD NOT AGREE THAT THE ASHTON PRESS IS REGARDED AS A "LITHO" PRESS, BUT HE DID SAY THAT THE PRESS PRIMARILY HAS "LITHO" EQUIPMENT AND THE MAJORITY OF SUCH PRESSES HAVE TWO "LITHO" UNITS. PRIOR TO 1954 HE HAD WORKED FOR A COMPANY WHICH USED SIMILAR EQUIPMENT AND WHICH WAS UNDER CONTRACT WITH THE AMALGAMATED LITHOGRAPHERS OF AMERICA WHICH REPRESENTED A CRAFT UNIT. THE WORK AT THAT TIME WAS DONE PRIMARILY ON A SHEET FEED OPERATION USING A HARRIS LITHO PRESS WHICH HAD SOME BUT NOT ALL OF THE COMPONENTS ON THE ASHTON PRESS. THE HARRIS PRESS HAD ONE "LITHO" UNIT, A RUBBER UNIT, PUNCH UNIT, SHEETER AND WAS EQUIPPED FOR NUMBERING AND WAS ADAPT-ABLE FOR BOTH ROLL OR SHEET FEED OPERATIONS. HE STATED THAT SUCH

OFFSET PRESSES ARE "LITHO" PRESSES BUT HE DOES NOT TERM THE ASHTON PRESS AS OFFSET. HIS OPINION IS THAT OPERATORS OF SHEET FEED PRESSES ARE NORMALLY COVERED BY THE APPLICANT UNION BUT IT WAS NOT GENERAL FOR THAT UNION TO COVER ROTARY BUSINESS FORM PRESSES. HE REFERRED TO THE FOLLOWING FORMS; ANTHES BUSINESS FORMS LTD., PAKFORD CONTINUOUS FORMS LTD., CONTINUOUS FORMS AND ENVELOPES LTD., AND MOORE BUSINESS FORMS, AND STATED THEIR PRIME FUNCTION IS THE MANUFACTURE OF BUSINESS FORMS AND THE COLLECTIVE AGREEMENTS INVOLVED IN EACH OF THOSE COMPANIES COVER AN ALL-EMPLOYEE BARGAINING UNIT. IN REGARD TO RECORDING AND STATISTICAL COMPANY, HE SAID THAT THEIR PRESSES ARE WEB FEED PRESSES AND OF A TYPE NORMALLY COVERED BY THE APPLICANT.

5. MR. GRAY, EXECUTIVE VICE-PRESIDENT OF THE APPLICANT, SAID THAT SUCH OFFSET PRESSES (WHICH OPERATE FROM A ROLL OF PAPER RATHER THAN A SKID) ARE COVERED BY THE APPLICANT UNION IN OTHER AGREEMENTS. HE REFERRED TO RECORDING AND STATISTICAL COMPANY WITH WHICH THE APPLICANT HAS AN AGREEMENT, AND THAT THE PRESSES IN THAT PLANT ARE WITH OFFSET ROTARY TYPES AND HAVE SIMILAR UNITS FOR NUMBERING, PERFORATING AND HOLING. THAT COMPANY, HOWEVER, DOES NOT USE AN ASHTON PRESS. HE ALSO TESTIFIED THAT GRAND AND TOY AND SUPREME BUSINESS FORMS HAVE ASHTON PRESSES FOR BUSINESS FORMS, AND GRIFFIN PRESS HAS AN O.P.M. BUSINESS FORM PRESS AND THESE COMPANIES ARE UNDER AN AGREEMENT WITH THE APPLICANT. THE MASTER AGREEMENTS SIGNED BY THE UNION HAVE MADE REFERENCE TO ROTARY BUSINESS FORM PRESSES SINCE 1961. MR. GRAY STATED THAT THE PRIMARY SKILL IN OPERATING A ROTARY OFFSET BUSINESS FORM PRESS IS IN THE ABILITY TO OPERATE WITH OFFSET UNITS USING A VARIETY OF COLOURS.

6. ROY TURNER, PRESIDENT OF THE APPLICANT, TESTIFIED THAT THE UNION HAS ORGANIZED VARIOUS BUSINESS FORM FIRMS SINCE ABOUT 1950. HE HAS WORKED AS A PRESSMAN AND HAS WORKED ON BUSINESS FORM PRESSES. HE HAS AS A PRESSMAN, ALWAYS BEEN A MEMBER OF THE APPLICANT INCLUDING WHEN HE OPERATED A ROLL FED TYPE WEB PRESS WHICH IS THE SAME AS AN ASHTON PRESS EXCEPT THAT THE ASHTON PRESS IS A LITTLE MORE SOPHISTICATED. HE SAID THAT THE BASIC KEY TO ITS OPERATION IS THE OFFSET UNIT AND THE OTHER OPERATIONS ARE KEYED TO THAT. HE SAID THAT THE LITHOGRAPHIC SKILLS IN THE OPERATION OF AN ASHTON PRESS WOULD BE EQUIVALENT TO AN OPERATOR OF A SMALL SHEET FEED PRESS DOING BLACK AND WHITE WORK. THE INK AND THE WATER MUST BE KEPT IN BALANCE AND IF THE "LITHO" OPERATOR IS NOT SUCCESSFUL THE JOB IS NOT SALEABLE, HOWEVER, HE AGREED THAT THE OTHER PROCESSES HAD TO BE RIGHT AS WELL. IN HIS OPINION IT TAKES A CRAFT SKILLED OPERATOR TO RUN AN ASHTON PRESS.

7. THE APPLICANT IS SEEKING, PURSUANT TO SECTION 6(2) OF THE LABOUR RELATIONS ACT TO REPRESENT A CRAFT UNIT COMPOSED OF ALL OFFSET PRESSMEN, THEIR APPRENTICES, FEEDERS AND HELPERS AND ALL STRIPPERS,

PLATEMARKERS AND THEIR APPRENTICES. THE RESPONDENT TAKES THE POSITION THAT THE EMPLOYEES INVOLVED IN THIS APPLICATION ARE NOT PERSONS WHO IN THEIR EMPLOYMENT ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES. THE RESPONDENT IS ENGAGED SOLELY IN THE MANUFACTURE OF BUSINESS FORMS. WE MUST FIRST LOOK TO THE PROVISIONS OF SECTION 6(2) OF THE ACT TO CONSIDER IF THE APPLICANT HAS SATISFIED THE REQUIREMENTS THEREIN SET OUT IN ORDER TO INVOKE THE MANDATORY PROVISIONS CONTAINED IN THE FIRST PART OF THAT SECTION. THE SKILLS OF THE EMPLOYEES CONCERNED IN THIS MATTER ARE RELATED TO THE LITHOGRAPHIC OPERATION. THE CONSTITUTION AND LAWS OF THE LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (FILED AS AN EXHIBIT) SETS OUT IN SECTION 2.2. THAT ITS JURISDICTION "SHALL COVER AND INCLUDE WITHOUT LIMITATION, ALL WORK, PROCESSES, OPERATIONS, AND PRODUCTS DIRECTLY OR INDIRECTLY IN WHOLE OR IN ANY PART INCIDENTAL TO, ASSOCIATED WITH OR RELATED TO LITHOGRAPHY, OFFSET, PHOTOENGRAVING, INTAGLIO, GRAVURE AND ALL OTHER METHODS OR TECHNIQUES OF PRINTING OR OTHERWISE REPRODUCING IMAGES OF ALL KINDS WITHIN OR OUTSIDE OF THE GRAPHIC ARTS INDUSTRIES AND ALL WORKERS WHEREVER LOCATED AND HOWEVER ASCRIBED WORKING IN ANY INDUSTRY WHATSOEVER IN WHICH SUCH WORK, PROCESSES, OPERATIONS AND PRODUCTS IN WHOLE OR IN ANY PART ARE INVOLVED EITHER FOR PRINTING OR FOR ANY OTHER PURPOSES, AND ALL WORK AND ALL MATTERS ENGAGED IN ANY CAPACITY IN ANY PART OR AREA OF THE GRAPHIC ARTS WHETHER OR NOT ASSOCIATED WITH OR RELATED TO LITHOGRAPHY, OFFSET, PHOTOENGRAVING, INTAGLIO, GRAVURE OR OTHER METHOD OF REPRODUCING IMAGES. SUCH JURISDICTION SHALL NOT BE DIMINISHED, LIMITED OR IMPAIRED BY ANY TECHNOLOGICAL OR OTHER CHANGE IN, EVOLUTION OF OR SUBSTITUTION FOR ANY WORK, PROCESS, OPERATION OR PRODUCT NOW WITHIN THE JURISDICTION OF THE INTERNATIONAL, BUT ANY SUCH ALTERATION SHALL BE ENCOMPASSED BY THE JURISDICTION OF THE INTERNATIONAL." IT IS ABUNDANTLY CLEAR THAT THE INTERNATIONAL UNION HAS REPRESENTED BOTH IN UNITED STATES AND CANADA EMPLOYEES EXERCISING THE SKILLS DESCRIBED WITHIN ITS JURISDICTION AND THAT THE APPLICANT IS A PARTY TO THE MASTER COLLECTIVE AGREEMENT APPLICABLE TO THE CANADIAN LITHOGRAPHERS ASSOCIATION INC. AND THE COUNCIL OF PRINTING INDUSTRIES OF ONTARIO AND THE EMPLOYING PRINTER'S ASSOCIATION OF MONTREAL INC. IT IS NOTED THAT THE RESPONDENT IS NOT A MEMBER OF ANY OF THE AFOREMENTIONED ASSOCIATIONS NOR INCLUDED WITHIN THE MASTER AGREEMENT. THERE IS NO DOUBT, HOWEVER, THAT THIS APPLICATION IS MADE BY A TRADE UNION "PERTAINING TO SUCH SKILLS OR CRAFT."

8. THE SECOND QUESTION, IN REVERSE ORDER, IS WHETHER THE EMPLOYEES CONCERNED COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT.

LITHOGRAPHERS AND THEIR APPRENTICES AND HELPERS HAVE ON NUMEROUS MATTERS BEEN REPRESENTED BY THE APPLICANT. THE APPLICANT FILED WITH THE BOARD A COLLECTIVE AGREEMENT WITH THE RECORDING AND STATISTICAL COMPANY IN WHICH THE APPLICANT IS RECOGNIZED AS THE BARGAINING AGENT FOR ITS LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS, AND WE WERE REFERRED TO BOARD FILE #16294-69-R WHERE ON JULY 2ND 1968, THE BOARD GRANTED A CERTIFICATE COVERING ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS EMPLOYED BY MARVIC PRESS LIMITED AT TORONTO. THE APPLICANT ALSO FILED WITH THE BOARD A LIST OF 15 COMPANIES ENGAGED IN THE MANUFACTURE OF BUSINESS FORMS, THE EMPLOYEES OF WHICH ARE UNDER AGREEMENTS WITH THE UNION. THE RECORDING AND STATISTICAL COMPANY AFOREMENTIONED APPEARS ON THAT LIST BUT THE OTHERS ARE LOCATED THROUGHOUT THE UNITED STATES AND IN QUEBEC. IN THIS RESPECT IT IS INTERESTING TO NOTE PART OF THE DECISION OF THE BOARD IN ART WIRE AND IRON CO. LTD. CASE 1954 CCH C.L.L.R., TRANSFER BINDER 1949-54 17,080; C.L.S. 76-437; AS FOLLOWS:

"IN SO FAR AS THE UNITED STATES IS CONCERNED, WE FIND ON THE EVIDENCE SUBMITTED THAT THERE IS AN ESTABLISHED TRADE UNION PRACTICE THERE FOR ARCHITECTURAL AND ORNAMENTAL IRON WORKERS TO BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS OR ITS LOCALS. IN CANADA, A SIMILAR BARGAINING PATTERN IS EMERGING BUT IT CANNOT BE SAID THAT THE PRACTICE IN THIS REGARD HAS GAINED WIDESPREAD OR GENERAL ACCEPTANCE IN THIS INDUSTRY IN CANADA. WE WOULD HESITATE TO SAY ON THE EVIDENCE PRESENTED THAT THE PRACTICE HAS BECOME ESTABLISHED IN CANADA OR IN ONTARIO. WE ARE OF THE OPINION, HOWEVER, THAT THE APPLICANT, LOCAL No. 721, DOES NOT HAVE TO RELY IN THESE CASES SOLELY ON THE PRACTICE IN ONTARIO. SUBSECTION (2) OF SECTION 6 DOES NOT CONTAIN ANY GEOGRAPHIC LIMITATIONS, UNDOUBTEDLY IN RECOGNITION OF THE FACTS OF ECONOMIC LIFE ON THIS CONTINENT. CONDITIONS WHICH GIVE RISE TO CERTAIN INDUSTRIAL PATTERNS IN THE UNITED STATES USUALLY FIND THEIR COUNTERPART IN CANADA. SINCE BOTH INDUSTRY AND TRADE UNIONS CROSS THE BORDER WITHOUT LET OR HINDRANCE, IT IS INEVITABLE THAT A TRADE UNION HABITUATED TO CERTAIN MODES OF ORGANIZING OR BARGAINING IN THE UNITED STATES WILL SEEK TO FOLLOW THEM IN CANADA; EXPERIENCE HAS SHOWN THAT

ANY BARGAINING PRACTICE THAT BECOMES AN INTEGRAL PART OF INDUSTRIAL RELATIONS IN THE UNITED STATES WILL IN DUE COURSE BE REFLECTED IN THE CANADIAN SCENE. TO ERECT A BARRIER AGAINST THE INTRODUCTION OF SUCH A PRACTICE INTO CANADA WILL USUALLY ONLY LEAD TO INDUSTRIAL STRIFE AND WE FAIL TO SEE THE WISDOM OF SUCH A COURSE UNLESS IT CAN BE SHOWN THAT THE PRACTICE WOULD BE HARMFUL TO THE PUBLIC INTEREST. THERE IS NOTHING IN THE EVIDENCE THAT WOULD WARRANT US IN COMING TO THE CONCLUSION THAT SUCH HARM WOULD BE DONE IF WE WERE TO RECOGNIZE THE "CRAFT" STATUS OF LOCAL NO. 721 IN THIS INDUSTRY. INDEED, IF WE WERE TO ADOPT ANY OTHER PRINCIPLE THAN THE ONE INDICATED, WE WOULD IN EFFECT BE SAYING THAT NO INTERNATIONAL TRADE UNION HAVING CRAFT CHARACTERISTICS WHICH HAD NOT HERETOFORE ENDEAVOURED TO ORGANIZE EMPLOYEES IN CANADA CAN EVER CLAIM THE BENEFITS CONFERRED BY SUBSECTION (2) OF SECTION 6."

THE APPLICANT CLAIMS TO REPRESENT THE EMPLOYEES IN QUESTION BECAUSE OF THEIR SKILLS IN LITHOGRAPHY AND THERE IS NO DOUBT THAT THE APPLICANT PERTAINS TO SUCH CRAFT AND THAT PERSONS EXERCISING THE CRAFT COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES.

9. THEN THE QUESTION REMAINS WHETHER THE EMPLOYEES CONCERNED EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES. WE ARE SATISFIED FROM THE EVIDENCE THAT THERE IS NO EFFECTIVE INTERCHANGE OF THE EMPLOYEES ENGAGED IN THE PREPARATORY WORK OR IN THE PRESSROOM WITH ANY OF THE OTHERS IN THE PLANT. THERE ARE ISOLATED INSTANCES REFERRED TO BY THE WITNESSES OF DOING COLLATING WORK, BUT IT IS CLEAR THAT THIS IS NOT A REGULAR PRACTICE NOR WOULD THE EMPLOYEES IN THE OTHER DEPARTMENTS OPERATE THE PRESSES. THE PRESSMEN AND THE STRIPPERS AND PLATEMAKERS WORK IN THE GROUND FLOOR AREA PHYSICALLY SEPARATED FROM THE OTHER EMPLOYEES REPORT TO THE PRESSROOM FOREMAN, AND THE CLASSIFICATIONS ARE DISTINCT AND READILY IDENTIFIABLE WITHIN THE WHOLE OPERATION. CONSIDERABLE EVIDENCE WAS PRESENTED WITH RESPECT TO THE TYPE AND FUNCTIONS OF THE ASHTON PRESS. IT IS STYLED AS A "BUSINESS FORM PRESS" AND IS ROLL FED CONTAINING A NUMBER OF UNITS WHICH PERFORM VARIOUS RELATED OPERATIONS. HAVING ALSO SEEN THE PRESS IN OPERATION AND ITS VARIOUS COMPONENTS IT WOULD IN OUR VIEW, BE FAIR TO SAY THAT THE "LITHO" UNIT AND THE RUBBER PRESS UNITS ARE THE PRIMARY FUNCTIONS OF THE PRESS FOR USE IN THE BUSINESS FORMS. ONCE THE IMPRINT IS MADE BY THOSE PROCESSES THEN IT IS NECESSARY, DEPENDING ON THE TYPE OF JOB BEING RUN, TO PERFORATE, SLIT AND FOLD.

THE EVIDENCE INDICATES THAT THE ASHTON PRESS IS KNOWN IN THE TRADE AS A "LITHO" PRESS BUT IN THIS SITUATION THERE IS ALSO ONE PRESS THAT DOES NOT HAVE A "LITHO" UNIT AND THEREFORE THE TRADE TERM CAN BE CRITICIZED AS BEING A MISNOMER. THAT HOWEVER IS A VERY MINOR CONSIDERATION AS THE BOARD MUST LOOK AT WHAT SKILLS THE EMPLOYEES THEMSELVES ARE USING. MR. MANION IS CLASSIFIED AS A JOURNEYMAN PRESSMAN AND OPERATES THE PRESSES; MR. WILLIAMS IS CLASSIFIED AS AN APPRENTICE PRESSMAN AND HAS BEEN TRAINED ON THE JOB, TO OPERATE THE PRESSES. HIS EVIDENCE IS THAT HE WILL BE EARNING A TOP RATE IN FIVE YEARS WHICH INDICATES THE TIME NECESSARY FOR HIM TO BECOME A JOURNEYMAN. WHILE IT MAY BE TRUE THAT IN THE USE OF THE MORE SOPHISTICATED EQUIPMENT ALL OF A LITHOGRAPHER'S SKILLS ARE NOT REQUIRED, OBVIOUSLY THE RESPONDENT CONSIDERS IT NECESSARY TO HAVE PRESSMEN OPERATE THESE MACHINES AND NOT PERSONS EMPLOYED IN A GENERAL CAPACITY ALTHOUGH IT IS EQUALLY TRUE THAT THE TRAINING PERIOD REQUIRED FOR MR. WILLIAMS WAS NOT AS EXTENSIVE AS ONE MIGHT HAVE THOUGHT. IT IS OUR FINDING THAT THE PRESSES WITH WHICH WE ARE CONCERNED ARE KNOWN AS WEB OFFSET ROTARY BUSINESS FORM PRESSES AND THAT THE KEY FUNCTION IS THE OFFSET UNIT. IN THIS RESPECT THE PRESSMEN ARE EXERCISING TECHNICAL SKILLS IN THE LITHOGRAPHIC PROCESS.

10. THE RESPONDENT SUBMITTED DETAILED EVIDENCE TO SUPPORT ITS SUBMISSION THAT THE LITHOGRAPHIC PROCESS FORMS ONLY A MINOR PORTION OF THE WORK BOTH IN MAKE-READY TIME AND IN OPERATING, AND THAT THE "LITHO" UNITS FORM ONLY A SMALL PORTION OF ALL THE UNITS OR COMPONENTS EMPLOYED IN THE MANUFACTURE OF THE BUSINESS FORMS. FURTHERMORE, THE RESPONDENT SUBMITTED THAT WITH FEW EXCEPTIONS, THE PRODUCT OF THE PRESSES IS NOT A FINISHED PRODUCT READY FOR SALE AT THAT STAGE. IT APPEARS TO US HOWEVER, THAT HOWEVER MINOR IN THE TOTAL OF THE VARIOUS OPERATIONS USED IN THE PRODUCTION OF A BUSINESS FORM, THE "LITHO" UNIT IS A VERY NECESSARY AND IMPORTANT PIECE OF EQUIPMENT IN THE MANUFACTURE OF BUSINESS FORMS, AND AN EXAMPLE OF THIS WAS FILED WITH THE BOARD IN THE FORM OF AN INSURANCE FORM. THE BLOCK PRINTING WHICH IS THE MAJORITY OF THE FORM IS "LITHO" WHILE THE NUMBERING, LETTERING AND PERFORATING ARE DONE WITH THE OTHER UNITS ON THE PRESS. IT CAN BE ARGUED THAT ONE PROCESS IS AS IMPORTANT AS THE OTHER IN THE FINAL PRODUCT BUT IT APPEARS TO US, AND WE ACCEPT THE EVIDENCE OF MR. TURNER WHEN HE STATED THAT THE KEY TO THE WHOLE THING IS THE BLACK IMPRESSION PUT ON BY THE OFFSET PLATE, THAT THE OTHER OPERATIONS MUST BE KEYED TO THE OFFSET. THE PRESS OPERATOR IS RESPONSIBLE FOR THIS LITHOGRAPHIC PRODUCTION AND ALTHOUGH IN THE TOTAL AVERAGE OF WORK DONE ON BUSINESS FORMS THAT PROCESS CONTRIBUTES ONLY A PART, IT IS A SIGNIFICANT PART AND THE PERSON WHO HANDLES THIS PROCESS WHETHER HE ALSO HANDLES OTHER PROCESSES, EXERCISES A CRAFT OR SKILL WHICH IS DISTINGUISHABLE FROM OTHER EMPLOYEES. SIMILARLY, THE EXTENT OR DEGREE TO WHICH THAT

SKILL IS EXERCISED IS NOT THE DETERMINATIVE FACTOR FOR THE PURPOSES OF SECTION 6(2) OF THE ACT. IT IS ENOUGH IF THE TRADITIONAL LITHOGRAPHIC SKILLS ARE BEING USED TO THE POINT TO DISTINGUISH THESE EMPLOYEES' JOBS FROM OTHERS. OF COURSE THE PRESSMAN OPERATES ALL THE UNITS BUT THAT DOES NOT DEROGATE FROM HIS CRAFT STATUS. THERE IS THEREFORE IN THIS PLANT A GROUP OF EMPLOYEES EXERCISING VARYING DEGREES OF TRADITIONAL CRAFT SKILLS IN A COMMON PROCESS AND WHO ARE A READILY IDENTIFIABLE UNIT IN THE PLANT. THERE IS NO HISTORY OF THE RESPONDENT BARGAINING ON A BROADER BASIS. THE RESPONDENT HAS POINTED OUT OTHER FIRMS SUCH AS PAKFOLD CONTINUOUS FORMS LIMITED, MOORE BUSINESS FORMS AND CONTINUOUS FORMS & ENVELOPES LTD. THAT DO BARGAIN ON AN ALL EMPLOYEE BASIS WITH UNIONS OTHER THAN THE APPLICANT UNION BUT IT MUST BE POINTED OUT THAT WHILE AN ALL EMPLOYEE UNIT MAY FORM AN APPROPRIATE UNIT, UNDER THE ACT A CRAFT UNIT MAY ALSO BE APPROPRIATE PROVIDED THE PROVISIONS OF SECTION 6(2) ARE SATISFIED.

11. IN THE RESULT THEREFORE, WE FIND THAT THE APPLICANT HAS BROUGHT THIS APPLICATION WITHIN THE PROVISIONS OF SECTION 6(2) OF THE ACT AND THE BARGAINING UNIT FOR WHICH IT HAS APPLIED IS APPROPRIATE SUBJECT TO THE AMENDMENT REQUESTED IN ITS COUNSEL'S LETTER OF MAY 7TH, 1969 AND AT THE HEARING OF THE BOARD IN AUGUST. WE THEREFORE FURTHER FIND THAT ALL OFFSET PRESSMEN, THEIR APPRENTICES AND HELPERS AND ALL STRIPPERS, PLATEMAKERS AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT IN ITS PLANT ON PARLIAMENT STREET AT TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD FURTHER FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT ON MARCH 17TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: NOVEMBER 5, 1969.

I DISSENT.

THE MAJORITY, IN ITS DECISION HAS CORRECTLY SET OUT THE RESPECTIVE ARGUMENTS OF THE APPLICANT AND THE RESPONDENT.

THE RESPONDENT SUBMITS THAT THE APPROPRIATE BARGAINING UNIT IS AN "ALL EMPLOYEE" UNIT AT ITS PLANT. ITS ARGUMENT IS THAT THE EMPLOYEES ARE NOT MEMBERS OF A CRAFT DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND THAT THE EMPLOYEES APPLIED FOR DO NOT PRODUCE A FINISHED PRODUCT BUT RATHER ONE WHICH REQUIRES INTERDEPENDANT WORK BY OTHER SKILLED EMPLOYEES.

THERE IS LITTLE DOUBT THAT THE PRESSES USED BY THE RESPONDENT REQUIRE SKILLS QUITE APART FROM THE LITHOGRAPHIC SKILLS. INDEED, THE EVIDENCE SUBMITTED BY THE COMPANY INDICATED THAT THE "LITHO" UNITS FORMED ONLY A SMALL PROPORTION OF ALL THE UNITS EMPLOYED ON THE COMPANY'S MACHINES IN THE MANUFACTURE OF ITS FINISHED PRODUCT. IN ADDITION, THE TIME AND NUMBER OF EMPLOYEES AND THE PROPORTION OF COST WITH RESPECT TO LITHOGRAPHIC WORK WAS FAR LESS THAN THAT INVOLVED WITH RESPECT TO OTHER CRAFT WORK PERFORMED IN THE MANUFACTURE OF THE COMPANY'S PRODUCT.

FURTHER, THE EVIDENCE DISCLOSES THAT THE EMPLOYEES IN SOME INSTANCES WERE SPARSELY TRAINED IN LITHOGRAPHIC SKILLS, THAT THE UNITS WHICH THEY OPERATE CAN BE USED WITHOUT THE PRESENCE OF ANY LITHOGRAPHIC EQUIPMENT, AND THAT FOR A MAJORITY OF TIME THESE EMPLOYEES, IN FACT, DO WORK WHICH DOES NOT NEED ANY LITHOGRAPHIC SKILLS.

ACCORDINGLY, BEARING IN MIND THE SPECIFIC WORDING OF SECTION 6(2) OF THE LABOUR RELATIONS ACT, I WOULD NOT FIND THAT THE EMPLOYEES APPLIED FOR EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM SUCH OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFTS. I WOULD HAVE FOUND THAT AN "ALL EMPLOYEE" UNIT WAS THE APPROPRIATE BARGAINING UNIT FOR THIS PLANT.

HOWEVER, EVEN IF I WERE TO FIND THAT THE APPROPRIATE UNIT WAS A CRAFT UNIT UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT, I WOULD NOT HAVE DESCRIBED IT AS THE MAJORITY DID IN PARAGRAPH 11 OF THEIR DECISION, BUT RATHER WOULD HAVE DESCRIBED IT AS "ALL LITHOGRAPHERS, THEIR APPRENTICES AND HELPERS IN THE EMPLOY OF THE COMPANY AT ITS PLANT ON PARLIAMENT STREET AT TORONTO, SAVE AND EXCEPT FOREMAN AND PERSONS ABOVE THE RANK OF FOREMAN."

16264-69-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L. V. PATHE FOR THE APPLICANT;
MICHAEL GORDON, FRANK BRIDGE FOR THE RESPONDENT; AND NO ONE
APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF O. B. SHIME, VICE-CHAIRMAN: NOVEMBER 26, 1969.

. . .

2. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED JULY 31, 1969 AND TO THE AGREEMENTS OF COUNSEL, I FIND THAT ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT ST. THOMAS, SAVE AND EXCEPT MEAT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF MEAT DEPARTMENT HEAD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED ON A COOPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED JULY 31, 1969, I FIND:

(A) THAT THE MEAT DEPARTMENT HEAD EXERCISES
MANAGERIAL AUTHORITY AND IS THEREFORE
EXCLUDED FROM THE BARGAINING UNIT:

(B) THAT JOHN STEEL DOES NOT EXERCISE
MANAGERIAL AUTHORITY AND IS THEREFORE
INCLUDED IN THE BARGAINING UNIT.

4. HAVING REGARD TO THE EVIDENCE TAKEN ON THE ISSUE WITH RESPECT TO THE ORIGATION AND CIRCULATION OF THE STATEMENT OF DESIRE, I AM SATISFIED THAT NOTWITHSTANDING THE FACT THAT JOHN STEEL IS INCLUDED IN THE BARGAINING UNIT, THE EMPLOYEES WERE OF THE OPINION THAT HE EXERCISED A DEGREE OF AUTHORITY OVER THEM SUFFICIENT TO AFFECT THEIR EMPLOYMENT STATUS. MR. STEEL ORIGINATED AND CIRCULATED THE STATEMENT OF DESIRE. AT THE TIME OF THE ORIGATION AND CIRCULATION MR. STEEL WAS ACTING MEAT DEPARTMENT HEAD. HE INDICATED IN HIS EVIDENCE "I WAS IN CHARGE". MR. ADAM WHO WAS CALLED BY MR. STEEL IN SUPPORT OF THE ORIGATION AND CIRCULATION OF THE STATEMENT OF DESIRE STATED THAT MR. STEEL WAS THE BOSS. IN VIEW OF MR. STEEL'S STATUS AT THE TIME OF THE ORIGATION AND CIRCULATION IN ALL THE CIRCUMSTANCES OF THIS CASE I FIND THAT THE STATEMENT OF DESIRE DOES NOT REFLECT THE

TRUE WISHES OF THE EMPLOYEES AND DOES NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED. SEE LINK MANUFACTURING CASE, 1954 OLRB BOARD FILE #48682-53. SEE ALSO UNITED STEELWORKERS OF AMERICA V. THE FURNITURE HARDWARE LIMITED 62 CLLC 1074, CLS 76-886, (OLRB).

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 17TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: NOVEMBER 26, 1969.

1. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED JULY 31, 1969, I FIND THAT THE MEAT DEPARTMENT HEAD DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND SHOULD THEREFORE BE INCLUDED IN THE BARGAINING UNIT. I ALSO FIND THAT JOHN STEEL DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND SHOULD ALSO BE INCLUDED IN THE BARGAINING UNIT.

2. I WOULD NOT GIVE WEIGHT TO THE STATEMENT OF DESIRE BECAUSE OF THE ATTITUDE, STATEMENTS AND INFLUENCE OF KEITH NEALE, MEAT SPECIALITY MAN, AT THE TIME OF POSTING OF NOTICE OF THIS APPLICATION. I FIND THAT SUCH MANAGERIAL BEHAVIOUR WAS THE TRIGGER TO THE ORIGINATION OF THE STATEMENT OF DESIRE, AS SUCH I FIND THAT THE STATEMENT OF DESIRE DOES NOT CAST DOUBT ON THE APPLICANT'S MEMBERSHIP EVIDENCE. ACCORDINGLY, I AM IN AGREEMENT WITH THE DECISION OF O. B. SHIME, VICE-CHAIRMAN, THAT THE APPLICANT SHOULD BE CERTIFIED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: NOVEMBER 26, 1969.

1. I AM IN AGREEMENT WITH PARAGRAPHS 1, 2 AND 3 OF THE DECISION OF O. B. SHIME, VICE-CHAIRMAN. HOWEVER, I FIND FROM THE EVIDENCE THAT JOHN STEEL ORIGINATED AND CIRCULATED THE STATEMENT OF DESIRE AND WAS NOT CONSIDERED BY THE EMPLOYEES TO BE A PERSON OF AUTHORITY WHO MIGHT AFFECT THEIR EMPLOYMENT STATUS AND, ACCORDINGLY, THE CASES REFERRED TO BY THE VICE-CHAIRMAN ARE NOT APPLICABLE IN THE PRESENT SITUATION. INDEED THE EMPLOYEE CALLED STATED INTER ALIA THAT HE DID NOT THINK THAT JOHN STEEL HAD THE AUTHORITY TO HIRE, FIRE OR AFFECT THEIR EMPLOYMENT STATUS WITH

RESPECT TO RAISES OF WAGES, ETC. I AM ALSO OF THE OPINION THAT THE STATEMENTS MADE BY KEITH NEALE, MEAT SPECIALITY MAN, AT THE TIME OF POSTING OF NOTICE OF THE APPLICATION FOR CERTIFICATION, WERE NOT OF A TYPE TO HAVE TRIGGERED THE ORIGINATION OF THE STATEMENT OF DESIRE AND I FIND THAT THE STATEMENT OF DESIRE DOES CAST DOUBT ON THE APPLICANT'S MEMBERSHIP EVIDENCE.

2. ACCORDINGLY, I WOULD HAVE ORDERED A REPRESENTATION VOTE.

16292-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. FRIEDMAN'S DEPARTMENT STORE, OPERATED BY SOO JOBBING COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

DECISION OF THE BOARD: NOVEMBER 25, 1969.

1. SUBSEQUENT TO THE DECISION OF THE BOARD HEREIN DATED NOVEMBER 6, 1969, THE BOARD HAS HAD AN OPPORTUNITY TO REVIEW THE REPORT OF THE EXAMINER AND THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED THE 7TH AND 21ST DAYS OF OCTOBER 1969 RESPECTIVELY, TOGETHER WITH THE WRITTEN SUBMISSIONS OF COUNSEL WITH RESPECT THERETO.

2. HAVING RECEIVED ALL THE EVIDENCE CONTAINED IN THE AFORESAID REPORTS AND THE SUBMISSIONS OF THE PARTIES, AND HAVING APPLIED THERETO THE PRINCIPLES SET OUT IN THE FALCONBRIDGE NICKLE MINES LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1966, P. 379, THE BOARD FINDS THAT MARJORIE EVANS, SARAH TURCOTTE, MARIE DES ROCHERS, PEARL MCKIGGAN, JOSEPH FERA, FLORA DAVEY, DORIS SOULIERE, MARY FALCIONI AND ROSE PEDINELLI DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.

3. IN REPLY TO THE APPLICATION, THE RESPONDENT ALLEGED THAT CERTAIN NAMED PERSONS ALLEGED BY IT TO BE MANAGEMENT HAD TAKEN PART IN THE ORGANIZING CAMPAIGN OF THE UNION AND THAT THE APPLICATION SHOULD THEREFORE BE DISMISSED. THE CHARGE RESTS UPON THE ASSUMPTION THAT SARAH TURCOTTE, MARJORIE EVANS, DORIS SOULIERE AND PEARL MCKIGGAN WERE MEMBERS OF MANAGEMENT. THE FINDING OF THE BOARD, WITH RESPECT TO THESE PERSONS AS SET OUT IN PARAGRAPH 2 HEREOF EFFECTIVELY REMOVES THE BASIS OF THE RESPONDENT'S CHARGES. THE CHARGES ARE THEREFORE DISMISSED AND THE HEARING SCHEDULED FOR DECEMBER 12TH WITH RESPECT THERETO IS CONSEQUENTLY UNNECESSARY AND IS HEREBY CANCELLED.

4. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN SAULT ST. MARIE, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16312-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SUPERTEST PETROLEUM CORPORATION, LIMITED (RESPONDENT) v. OIL CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: NOVEMBER 26, 1969.

1. IN ITS DECISION DATED JULY 30, 1969, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE EMPLOYMENT STATUS OF HARRY FOSTER (REFERRED TO AS HENRY FOSTER IN THE ABOVE DECISION), TOSHIO MORITA, JOHN STEWART, JOHN MURPHY, WILLIAM MORPHY AND SAID BY THE RESPONDENT TO BE INDEPENDENT CONTRACTORS AND WILLIAM STAYNER.

2. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED SEPTEMBER 26, 1969, IN THIS MATTER.

3. THE PARTIES AGREED THAT FOR THE PURPOSES OF THE EXAMINER'S REPORT ALL THE ABOVE NAMED PERSONS WERE PROPERLY REPRESENTED AS TO STATUS AND DUTIES BY HARRY FOSTER. IT WAS AGREED THAT EVIDENCE WITH RESPECT TO THIS MAN SHOULD APPLY TO AND GOVERN THE CASES OF THE OTHER PERSONS SAID BY THE RESPONDENT TO BE INDEPENDENT CONTRACTORS.

4. THE BOARD HAS APPLIED TO ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AND THE EXHIBIT THERETO THE CUSTOMARY TESTS WITH RESPECT TO THE DEGREE OF CONTROL EXERCISED BY THE RESPONDENT, THE OWNERSHIP OF TOOLS, THE CHANCE OF PROFIT AND THE RISK OF LOSS AND FIND THAT ALL FOUR TESTS HAVE NOT BEEN SATISFACTORILY FULFILLED.

5. AS THE RESULT OF THE FOREGOING, WE FIND THAT HARRY FOSTER,

TOSHIO MORITA, JOHN STEWART, JOHN MURPHY AND WILLIAM MORPHY ARE NOT INDEPENDENT CONTRACTORS, BUT ARE EMPLOYEES OF THE RESPONDENT.

6. IT FOLLOWS THAT THE EMPLOYEES ABOVE NAMED FALL WITHIN THE BARGAINING UNIT DESCRIBED IN THE RECOGNITION CLAUSE OF THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER. THE AGREEMENT RECITES THAT THE INTERVENER WAS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE COMPANY WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE COMPANY RECOGNIZES THE UNION AS THE BARGAINING AGENT OF SUCH EMPLOYEES. WE ARE OF THE OPINION THAT THE FACT THAT THERE IS NO CLASSIFICATION COVERING THE TYPE OF WORK UNDER CONSIDERATION NAMED IN THE AGREEMENT IS OF NO CONSEQUENCE IN THE CIRCUMSTANCES OF THIS CASE.

7. THE APPLICANT HAS NOT ESTABLISHED THAT IT OR THE EMPLOYEES IT REPRESENTS COME WITHIN THE TERMS OF SECTION 6.2 OF THE LABOUR RELATIONS ACT.

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

16345-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. ACME RULER COMPANY LIMITED (RESPONDENT).

- AND -

16347-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. ACME RULER COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. A. MACLEAN, E. ROVET AND VINCENT GENTILE FOR THE APPLICANT, C. G. RIGGS, S. B. FORGACS, J. A. BROWNRIGG AND F. C. BEALE FOR THE RESPONDENT, JEAN FOSS, STEPHANIE HORLACHER, MARY GORMAN AND BETTY ASKIN FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: NOVEMBER 17, 1969.

1. THE BOARD DIRECTS THAT THE ABOVE APPLICATIONS BE CONSOLIDATED.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

4. THE BOARD FURTHER FINDS THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT PRODUCTION CONTROL MANAGER, PERSONS ABOVE THE RANK OF PRODUCTION CONTROL MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

5. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE PLANT MANAGER, OFFICE MANAGER, CHIEF COST ACCOUNTANT, SALES MANAGER AND ASSISTANT SECRETARY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN BARGAINING UNIT #2.

6. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED SEPTEMBER 11, 1969, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT BRIAN MCBURNEY, A PERSON CLASSIFIED BY THE RESPONDENT AS A PAYROLL AND PERSONNEL CLERK, IS DIRECTLY INVOLVED IN THE HIRING PROCESS AND HAS ACTUALLY HIRED EMPLOYEES ON SEVERAL OCCASIONS. IN ADDITION, MR. MCBURNEY IS ACTIVELY INVOLVED WITH AND IS REQUIRED TO USE THE PERSONNEL FILES OF THE RESPONDENT IN THE PERFORMANCE OF HIS WORK. FOR THESE REASONS, THE BOARD THEREFORE FINDS THAT BRIAN MCBURNEY EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND FOR THE PURPOSES OF CLARITY, WE DECLARE THAT HE IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #2.

7. THE RESPONDENT CALLED MR. MCBURNEY TO TESTIFY IN SUPPORT OF ITS ALLEGATIONS THAT MR. MCBURNEY HAD PARTICIPATED IN THE APPLICANT'S ORGANIZING CAMPAIGN AND HAD ACTED AS COLLECTOR WHEN CERTAIN EMPLOYEES JOINED THE APPLICANT UNION. THE EVIDENCE ESTABLISHED, HOWEVER, THAT MR. MCBURNEY DID NOT INITIATE THE APPLICANT'S ORGANIZING CAMPAIGN.

8. IN ADDITION TO ACTING AS COLLECTOR, IT APPEARED THAT A UNION ORGANIZER CONTACTED MR. MCBURNEY TO ASCERTAIN WHETHER OR NOT HE WAS INTERESTED IN JOINING THE APPLICANT UNION. MR. MCBURNEY PARTICIPATED IN MEETINGS OF EMPLOYEES CALLED TO OBTAIN SUPPORT OF THE UNION. HE ALSO ACCOMPANIED ANOTHER EMPLOYEE TO THE HOMES OF A NUMBER OF PERSONS IN AN ATTEMPT TO CAUSE THEM TO BECOME MEMBERS OF THE UNION. MR. MCBURNEY TESTIFIED THAT THE EMPLOYEES WOULD NOT BELIEVE HIM TO BE ACTING ON BEHALF OF THE COMPANY WHEN HE SUPPORTED THE UNION. HE REALIZED THAT MANAGEMENT WOULD NOT HAVE GIVEN HIM PERMISSION TO DO SO. HE FURTHER TESTIFIED THAT THE EMPLOYEES WOULD NOT LOOK UPON HIM AS A REPRESENTATIVE OF MANAGEMENT WHEN HE WAS SUPPORTING THE UNION. IN RESPONSE TO A QUESTION PUT TO HIM BY THE REPRESENTATIVE OF THE RESPONDENT, MR. MCBURNEY STATED THAT HE DID NOT DISCUSS HIS JOB WITH THE PERSONS HE CONTACTED ON BEHALF OF THE UNION, HOWEVER, HE TOLD THE EMPLOYEES NOT TO TELL MANAGEMENT WHAT HE WAS DOING. HE FURTHER STATED THAT WHEN HE TOLD THEM THIS THEY WOULD KNOW HE WAS NOT WORKING FOR MANAGEMENT.

9. ON THE FACTS OF THIS CASE, WE DISTINGUISH BETWEEN MR. MCBURNEY'S SUPPORT FOR THE UNION AS EVIDENCED BY HIS STATEMENTS IN FAVOUR OF THE UNION AND HIS ATTENDANCE AT UNION MEETINGS FROM THE EVIDENCE CONCERNING THE FACT THAT HE ACTED AS COLLECTOR IN SIGNING MEMBERSHIP DOCUMENTS. WHILE THE DISTINCTION BETWEEN SIGNING CARDS AND SUPPORTING THE UNION MAY BE FINE, WE BELIEVE THE DISTINCTION IS BOTH MATERIAL AND SUBSTANTIVE.

10. SECTION 10 OF THE ACT READS AS FOLLOWS:

THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

11. IT IS TO BE NOTED THAT EVEN IF MR. MCBURNEY WERE ACTING AS THE EMPLOYER IN THIS CASE HIS ACTIVITIES COULD NOT BE CHARACTERIZED AS PARTICIPATION IN THE FORMATION OF THE UNION. THIS UNION WAS FORMED LONG BEFORE THIS CAMPAIGN COMMENCED. NEITHER CAN MR. MCBURNEY'S ACTIVITIES BE CHARACTERIZED AS PARTICIPATION IN THE ADMINISTRATION OF THE TRADE UNION. HIS STATEMENTS IN SUPPORT OF THE TRADE UNION ALSO CANNOT BE SAID TO BE A FINANCIAL CONTRIBUTION. AGAIN, THE MERE PAYMENT OF \$1.00 INITIATION FEE IS NOT, IN OUR VIEW, THE FINANCIAL CONTRIBUTION BY AN EMPLOYER REFERRED TO IN SECTION 10.

12. IF MR. MCBURNEY WERE IN FACT ACTING ON BEHALF OF HIS EMPLOYER, IT MAY BE ARGUED THAT SUCH ACTIVITY WOULD BE CONTRARY TO SECTION 48 OF THE ACT SINCE HE WOULD THEN BE PARTICIPATING, ON BEHALF OF HIS EMPLOYER, IN THE "SELECTION" OF A TRADE UNION. WHILE AN EMPLOYER IS PROHIBITED FROM INTERFERING WITH THE SELECTION OF A TRADE UNION UNDER SECTION 48, IT IS TO BE NOTED THAT SECTION 10 OF THE ACT DOES NOT PROHIBIT THE BOARD FROM CERTIFYING A TRADE UNION WHERE AN EMPLOYER HAS PARTICIPATED IN OR INTERFERED WITH THE EMPLOYEES' SELECTION OF THAT UNION.

13. THE ACTIVITIES OF MR. MCBURNEY THEREFORE DO NOT PROHIBIT THE BOARD FROM CERTIFYING THE TRADE UNION UNDER SECTION 10 UNLESS HE WAS CONTRIBUTING "OTHER SUPPORT" TO THE UNION AS AN EMPLOYER. IF HE WAS NOT ACTING AS AN EMPLOYER, THEN SUCH ACTIVITIES GO TO THE WEIGHT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT RATHER THAN DESTROY THE APPLICANT'S ABILITY TO BECOME A CERTIFIED BARGAINING AGENT.

14. IT HAS BEEN A LONG STANDING PRACTICE OF THE BOARD NOT TO GIVE EFFECT TO MEMBERSHIP EVIDENCE WHICH A MEMBER OF MANAGEMENT HAS SIGNED UP, SEE MCCARTHY MILLING COMPANY LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, 17,070; (1954) C.L.S. VOL. 2 76-424, AND SWIFT CANADIAN CO. LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54, 17,071; (1954) C.L.S. VOL. 2 76-425. THE BOARD IN THIS CASE IS NOT PREPARED TO DEPART FROM THIS PRACTICE AND GIVE EFFECT TO ANY OF THE MEMBERSHIP DOCUMENTS SIGNED UP BY MR. MCBURNEY.

15. HOWEVER, THE "OTHER SUPPORT" GIVEN BY MR. MCBURNEY TO THE APPLICANT AND THE MANNER IN WHICH THAT SUPPORT WAS GIVEN APPEARS TO BE ON ALL FOURS WITH THE FACTS OF THE AIR LIQUIDE CASE, 64 C.L.L.C. 16,002. THE ACTIVITIES OF MR. MCBURNEY WERE NOT DIRECTED BY THE RESPONDENT NOR WERE THEY OF SUCH A NATURE THAT THE EMPLOYEES WOULD LIKELY CONSIDER THEM TO BE APPROVED BY THE RESPONDENT. IT WAS OBVIOUS FROM MR. MCBURNEY'S ACTIVITIES AND THE STATEMENTS HE MADE TO THE EMPLOYEES THAT HE WAS NOT ACTING ON BEHALF OF THE EMPLOYER WHEN HE SUPPORTED THE APPLICANT UNION. IN ADDITION, NONE OF THE EMPLOYEES WHO BECAME MEMBERS OF THE APPLICANT OBJECTED TO THE ACTIVITIES OF MR. MCBURNEY. IN THESE CIRCUMSTANCES, WE FIND THAT THE "OTHER SUPPORT" GIVEN BY MR. MCBURNEY WOULD NOT LIKELY CAUSE THE EMPLOYEES TO BELIEVE HE WAS ACTING AS THEIR EMPLOYER OR ON BEHALF OF THEIR EMPLOYER AND THEY WOULD NOT BE UNDULY INFLUENCED BY SUCH SUPPORT.

16. IN ALL THE CIRCUMSTANCES OF THIS CASE AND FOR THE REASONS GIVEN IN THE AIR LIQUIDE CASE, THE BOARD IS SATISFIED, IN THE ABSENCE OF OBJECTIONS FROM ANY OF THE EMPLOYEES OF THE RESPONDENT WHO JOINED THE APPLICANT UNION, THAT THE SUPPORT RENDERED TO THE APPLICANT BY MR. MCBURNEY DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP OF THE APPLICANT WITH RESPECT TO CARDS THAT HE DID NOT SIGN UP. IN ADDITION, THE BOARD FINDS THAT THE APPLICANT'S STATUS AS A TRADE UNION CAPABLE OF BEING CERTIFIED AS A BARGAINING AGENT HAS NOT BEEN IMPAIRED BY SUCH ASSISTANCE.

17. BARGAINING UNIT #1 CONTAINED THE NAMES OF A TOTAL OF 39 PERSONS. THE APPLICANT HAS FILED MEMBERSHIP EVIDENCE ON BEHALF OF 29 PERSONS WHOSE NAMES APPEAR ON THE RESPONDENT'S LIST OF EMPLOYEES IN BARGAINING UNIT #1. TWO OF THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT WITH RESPECT TO EMPLOYEES IN BARGAINING UNIT #1 BEAR THE NAME OF BRIAN MCBURNEY AS THE COLLECTOR. IF THESE TWO CARDS ARE DISCOUNTED BECAUSE OF THE FACT THAT A MEMBER OF MANAGEMENT ACTED AS COLLECTOR AND IF THE OTHER MEMBERSHIP DOCUMENTS ARE FOUND TO BE IN ORDER, THERE WOULD REMAIN 27 MEMBERSHIP DOCUMENTS WITH RESPECT TO WHICH MR. MCBURNEY DID NOT PARTICIPATE AS A COLLECTOR.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 30, 1969, THE TERMINAL DATE FIXED FOR THE APPLICATION WITH RESPECT TO BARGAINING UNIT #1 AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #1.

20. IN ADDITION TO SIGNING AN APPLICATION FOR MEMBERSHIP CARD, MR. MCBURNEY ALSO ACTED AS COLLECTOR WITH RESPECT TO THE MEMBERSHIP CARD OF ONE OTHER PERSON IN BARGAINING UNIT #2. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WITH RESPECT TO BARGAINING UNIT #2 CONTAINED THE NAMES OF 8 PERSONS INCLUDING MR. MCBURNEY. SINCE MR. MCBURNEY HAS BEEN FOUND TO BE A MEMBER OF MANAGEMENT THE LIST OF EMPLOYEES IN BARGAINING UNIT #2 WOULD BE REDUCED TO 7. AGAIN, IF MR. MCBURNEY'S MEMBERSHIP CARD AND THE OTHER CARD HE SIGNED UP ARE DISCOUNTED, THE APPLICANT WOULD HAVE THREE MEMBERS OUT OF A TOTAL OF SEVEN PERSONS IN BARGAINING UNIT #2.

21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 2, 1969, THE TERMINAL DATE FIXED FOR THE APPLICATION WITH RESPECT TO BARGAINING UNIT #2 AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. THE APPLICATION IS DISMISSED WITH RESPECT TO BARGAINING UNIT #2.

DECISION OF BOARD MEMBER H. F. IRWIN: NOVEMBER 17, 1969.

1. I DISSENT.

2. IN PARAGRAPH 6 OF THE MAJORITY DECISION, THE BOARD FINDS THAT BRIAN MCBURNEY, AN EMPLOYEE OF THE RESPONDENT:

- IS DIRECTLY INVOLVED IN THE HIRING PROCESS AND HAS ACTUALLY HIRED EMPLOYEES ON SEVERAL OCCASIONS;
- IS ACTIVELY INVOLVED IN AND IS REQUIRED TO USE THE PERSONNEL FILES OF THE RESPONDENT IN THE PERFORMANCE OF HIS WORK;
- EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT; AND
- IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE OFFICE BARGAINING UNIT.

I CONCUR IN THESE FINDINGS.

3. IN PARAGRAPHS 7 AND 8 OF THE MAJORITY DECISION, THE BOARD STATES INTER ALIA THAT THE EVIDENCE ADDUCED BY THE RESPONDENT ESTABLISHES THAT BRIAN MCBURNEY:

- PARTICIPATED IN THE APPLICANT UNION'S ORGANIZING CAMPAIGN;
- HAD ACTED AS COLLECTOR WHEN CERTAIN EMPLOYEES JOINED THE APPLICANT UNION;

- PARTICIPATED IN MEETINGS OF EMPLOYEES CALLED TO OBTAIN SUPPORT OF THE UNION;
- ACCOMPANIED ANOTHER EMPLOYEE TO THE HOMES OF A NUMBER OF PERSONS IN AN ATTEMPT TO CAUSE THEM TO BECOME MEMBERS OF THE UNION.

I CONCUR IN THESE FINDINGS.

4. IN THE MCCARTHY MILLING COMPANY LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-54, ¶17,070, 1954 C.L.S. VOL. 2, 76-424, THE BOARD STATED:

AT THE HEARING OF THIS APPLICATION, IT CAME TO LIGHT THAT SOME OF THE EMPLOYEES WERE "SIGNED UP" BY J. BUSH, DESCRIBED IN THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AS SUPERVISOR OF GRINDING IN THE FEED MILL. ON THE BASIS OF THE EVIDENCE PRESENTED AT THE HEARING, WE FIND THAT BUSH IS A FOREMAN. HE EXERCISES THE SORT OF AUTHORITY WHICH MAKES HIM A PERSON WHO MAY PROPERLY BE DESCRIBED AS ACTING ON BEHALF OF MANAGEMENT IN MATTERS RELATING TO LABOUR RELATIONS AND WHO IS FORBIDDEN TO PARTICIPATE IN OR INTERFERE WITH THE FORMATION OR ADMINISTRATION OF A TRADE UNION UNDER SECTION 45 OF THE LABOUR RELATIONS ACT. WE ARE NOT PREPARED TO ACCEPT THE DOCUMENTARY EVIDENCE PROCURED IN PART BY SUCH A PERSON AS VALID EVIDENCE OF MEMBERSHIP IN THE APPLICANT. THE APPLICATION IS ACCORDINGLY DISMISSED. (EMPHASIS ADDED)

5. THIS PRINCIPLE WAS REAFFIRMED BY THE BOARD IN THE SWIFT CANADIAN CO. LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1949-54, ¶17,071, 1954 C.L.S. VOL. 2, 76-425.

6. IN THE INSTANT CASE, THE ACTIVITIES OF BRIAN MCBURNEY FALL SQUARELY WITHIN THE BOARD POLICY ENUNCIATED IN THE ABOVE CITED CASES. ACCORDINGLY, I WOULD HAVE DISMISSED THIS APPLICATION IN RESPECT OF BOTH THE PLANT AND OFFICE BARGAINING UNITS.

7. THE MAJORITY DECISION AT PARAGRAPH 14 STATES THAT THE SUPPORT GIVEN THE APPLICANT UNION BY MCBURNEY, OTHER THAN "SIGNING UP" CARDS, AND THE MANNER IN WHICH THAT SUPPORT WAS GIVEN APPEARS TO BE ON ALL FOURS WITH THE FACTS IN THE AIR LIQUIDE CASE, 64 C.L.L.C. 16,002. IT FURTHER STATES THAT THE ACTIVITIES OF MCBURNEY WERE NOT DIRECTED BY THE RESPONDENT, NOR WERE THEY

OF SUCH A NATURE THAT THE EMPLOYEES WOULD LIKELY CONSIDER THEM TO BE APPROVED BY THE RESPONDENT. FOR THESE REASONS, THE MAJORITY DECISION FINDS THAT THE SUPPORT RENDERED TO THE APPLICANT BY MCBURNEY DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP OF THE APPLICANT WITH RESPECT TO THE MEMBERSHIP CARDS THAT HE DID NOT "SIGN UP". WITH RESPECT, I AM UNABLE TO CONCUR IN THIS CONCLUSION.

8. THERE ARE THREE PRINCIPAL DISTINCTIONS BETWEEN THE AIR LIQUIDE CASE AND THE INSTANT CASE:

- (A) IN THE AIR LIQUIDE CASE, THE EMPLOYEES WERE AWARE OF THE FACT THAT ROWE, (THE EMPLOYEE CORRESPONDING TO MCBURNEY IN THE INSTANT CASE) IN SUPPORTING THE UNION, WAS ACTING TO ADVANCE HIS OWN PERSONAL INTERESTS AND THAT HE WAS ACTING AGAINST THE INTERESTS OF THE EMPLOYER. THERE WAS NO EVIDENCE IN THE INSTANT CASE THAT MCBURNEY HAD EXPRESSED OPEN DISSATISFACTION WITH HIS EMPLOYER.
- (B) IN DISTINCTION TO THE AIR LIQUIDE CASE, MCBURNEY PLAYED AN INTEGRAL PART IN THE CAMPAIGN TO ORGANIZE THE EMPLOYEES AND SIGNED UP MEMBERS IN BOTH THE PLANT AND OFFICE BARGAINING UNITS. THIS IS IN DIRECT CONTRAST TO ROWE WHO DID NOT "SIGN UP" MEMBERS IN THE UNION.
- (C) THE UNION WAS WELL AWARE OF MCBURNEY'S ACTIVITIES BEFORE THE TERMINAL DATE OF THE APPLICATION. IT WAS, IN FACT, THE UNION ORGANIZER, GENTILE, WHO APPROACHED MCBURNEY IN THE FIRST INSTANCE TO SOLICIT HIS ASSISTANCE ON THE UNION'S BEHALF, MCBURNEY'S PARTICIPATION, THEREFORE, CAME AT A TIME WHEN HE WAS IN A POSITION TO INFLUENCE THE FINAL DETERMINATION OF THE APPLICATION.

IT WAS THE ABSENCE OF THESE FACTORS IN THE AIR LIQUIDE CASE WHICH IN PART LED THE BOARD TO THE CONCLUSION THAT ROWE'S SUPPORT DID NOT WEAKEN THE APPLICANT'S EVIDENCE OF MEMBERSHIP. THEIR PRESENCE IN THE INSTANT CASE IMPELS ME TO CONCLUDE THAT THE APPLICANT'S EVIDENCE OF MEMBERSHIP SHOULD NOT BE ACCEPTED BY THE BOARD.

9. SECTION 10 OF THE ACT STATES INTER ALIA THAT THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER HAS PARTICIPATED IN ITS FORMATION. THE BOARD CLEARLY INTERPRETS THIS PROVISION TO INCLUDE THE FORMATION OR ORGANIZATION OF THE UNION AT THE PLACE OF EMPLOYMENT AS EXEMPLIFIED IN THE MCCARTHY MILLING COMPANY LIMITED CASE, SUPRA, AND REAFFIRMED IN THE SWIFT CANADIAN CO. LIMITED CASE, SUPRA. IN BOTH OF THESE CASES, THE UNION APPLYING FOR CERTIFICATION

HAD BEEN FOUNDED MANY YEARS PRIOR TO THE DATE OF APPLICATION FOR CERTIFICATION. THE DIRECTION GIVEN THE BOARD UNDER SECTION 10 IS MANDATORY, NOT DISCRETIONARY, AND, FOR THIS REASON ALONE, THE APPLICATION SHOULD BE DISMISSED. TO HOLD OTHERWISE, SECTION 10 MUST BE INTERPRETED TO APPLY ONLY TO UNIONS BEING FOUNDED AT THE TIME OF THE APPLICATION FOR CERTIFICATION WHICH THE BOARD HAS NOT DONE.

10. FURTHER, THE SECTION REFERS TO THE CONTRIBUTION OF FINANCIAL AND "OTHER SUPPORT" TO THE TRADE UNION. THE EVIDENCE IS CLEAR THAT MCBURNEY HAS CONTRIBUTED "OTHER SUPPORT" THROUGH HIS ACTIVE PARTICIPATION ON BEHALF OF THE UNION THROUGHOUT THE CAMPAIGN. CONSEQUENTLY, ONCE HIS PARTICIPATION IN THE FORMATION OF THE UNION AT THE RESPONDENT COMPANY OR HIS LIVELY ACTIVITY AMONG THE RESPONDENT'S EMPLOYEES ON BEHALF OF THE UNION DURING THE ORGANIZING CAMPAIGN HAS BEEN ESTABLISHED, I WOULD HAVE FOUND THAT THE BOARD IS OBLIGED UNDER SECTION 10 OF THE ACT TO DISMISS THE APPLICATION.

11. I AM STRONGLY SUPPORTED IN THIS VIEW BY THE BOARD'S DECISION IN THE MICRODENT LABORATORIES LTD. CASE, BOARD FILE NO. 16580-69-R, DATED OCTOBER 7, 1969 AND AS YET UNREPORTED. IN THAT CASE, THE BOARD REFUSED TO CERTIFY THE APPLICANT TRADE UNION BY VIRTUE OF THE PROVISIONS OF SECTION 10 OF THE ACT EVEN THOUGH THE MEMBER OF MANAGEMENT INVOLVED, AT THE REQUEST OF THE UNION ORGANIZER, HAD MERELY ARRANGED A TIME FOR THE EMPLOYEES AS A GROUP TO MEET WITH THE ORGANIZER AND HAD VOLUNTARILY LENT HIS PRESENCE TO THE MEETING BUT TOOK NO PART WHATSOEVER IN THE DISCUSSIONS. WHILE THE PRESENCE OF THE PRESIDENT OF THE COMPANY AT SUCH A MEETING MAY HAVE BEEN ON HIS OWN PART TOTALLY INNOCENT AND HIS DEALINGS WITH THE UNION AT ARM'S LENGTH, THE BOARD HELD THAT HIS ACTIONS IN THE CIRCUMSTANCES COULD NOT HELP BUT INFLUENCE HIS EMPLOYEES AND THIS IS THE KIND OF SUPPORT THAT THE APPLICANT WAS SEEKING WHEN THE UNION ORGANIZER FIRST APPROACHED THE COMPANY OFFICIAL. THE BOARD FURTHER FOUND THAT THE RESPONDENT DID BY THE ACTIONS OF ITS PRESIDENT CONTRIBUTE "OTHER SUPPORT" TO THE TRADE UNION WITHIN THE MEANING OF SECTION 10 OF THE ACT AND UNDER THE PROVISIONS OF THAT SECTION WAS REQUIRED TO DISMISS THE APPLICATION. IN THE INSTANT CASE, THE INVOLVEMENT AND ACTIONS OF THE MANAGEMENT REPRESENTATIVE WERE ON A MUCH MORE EXTENSIVE AND INTENSIVE SCALE. BRIAN MCBURNEY CONTRIBUTED NOT ONLY HIS CONTINUED PRESENCE, BUT HIS ACTIVE AND CONTINUOUS SUPPORT ON BEHALF OF THE UNION OVER A LONG PERIOD OF TIME INCLUDING THE SOLICITATION AND "SIGNING UP" OF EMPLOYEES AS UNION MEMBERS. I WOULD HAVE FOUND THIS TO BE MUCH MORE COGENT EVIDENCE OF "OTHER SUPPORT" WITHIN THE MEANING OF SECTION 10 OF THE ACT THAN THAT WHICH EXISTED IN THE MICRODENT LABORATORIES LTD. CASE, SUPRA.

12. IT IS ALSO IMPORTANT TO NOTE THAT THE DUTIES AND RESPONSIBILITIES OF BRIAN MCBURNEY IN THE EXERCISE OF HIS MANAGERIAL AUTHORITY BROUGHT HIM IN DIRECT CONTACT WITH THE EMPLOYEES IN THE BARGAINING UNITS. THIS IS PARTICULARLY TRUE IN AN INDUSTRIAL ESTABLISHMENT AS SMALL AS THE RESPONDENT COMPANY WHERE HE ACTIVELY PARTICIPATED IN THE HIRING PROCESS AND SUPERVISED THE PERSONNEL FUNCTIONS OF THE COMPANY. MOREOVER, MCBURNEY TESTIFIED THAT AMONGST THOSE EMPLOYEES WHOM HE WAS INSTRUMENTAL IN "SIGNING UP" WERE EMPLOYEES WHOM HE PERSONALLY HAD HIRED. BY THE VERY NATURE OF THIS PRIMARY AND CLOSE RELATIONSHIP, IT IS ONLY NATURAL THAT HE WOULD HAVE A SILENT AND COMPELLING INFLUENCE OVER SUCH PERSONS. THIS IS PRECISELY THE KIND OF SUPPORT THE UNION ORGANIZER, GENTILE, WAS SEEKING WHEN HE SOLICITED MCBURNEY'S ASSISTANCE.

13. TO HOLD THAT BECAUSE MCBURNEY'S STATEMENTS TO THE EMPLOYEES MADE IT OBVIOUS THAT HE WAS NOT ACTING ON BEHALF OF THE EMPLOYER WHEN HE SUPPORTED THE APPLICANT UNION AND THAT THE EVIDENCE OF MEMBERSHIP IS NOT WEAKENED IS COMPLETELY AT VARIANCE WITH THE PRINCIPLE WHICH THIS BOARD HAS CONSISTENTLY APPLIED WHERE A MEMBER OF MANAGEMENT HAS PARTICIPATED IN THE ORIGINATION OR CIRCULATION OF A PETITION IN OPPOSITION TO CERTIFICATION. IN THE LATTER SITUATION, THE BOARD HAS ALWAYS DISREGARDED SUCH EVIDENCE OF OPPOSITION BECAUSE OF MANAGEMENT PARTICIPATION NOTWITHSTANDING THAT SUCH PARTICIPATION MAY BE COMPLETELY CONTRARY TO THE COMPANY'S POLICY AND WITHOUT ITS KNOWLEDGE OR APPROVAL. TO BE CONSISTENT, I BELIEVE THAT THIS PRINCIPLE SHOULD ALSO BE APPLIED IN THE INSTANT CASE WHERE, WITHOUT THE KNOWLEDGE OR APPROVAL OF THE COMPANY, AT THE REQUEST OF THE UNION ORGANIZER, A REPRESENTATIVE OF MANAGEMENT HAS PARTICIPATED IN THE SOLICITATION OF MEMBERSHIP CARDS IN FAVOUR OF THE UNION.

14. FOR ALL THE ABOVE REASONS, I WOULD HAVE DISMISSED THE APPLICATION IN RESPECT OF BARGAINING UNITS #1 (PLANT) AND #2 (OFFICE).

16417-69-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH THE CANADIAN LABOUR CONGRESS AND A.F.L.-C.I.O. (APPLICANT) V. WRAGGE SHOES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: NOVEMBER 26, 1969.

1. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT DATED OCTOBER 17, 1969 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT WHILE THERE IS SOME CONTACT WITH THE PLANT EMPLOYEES, YVONNE FEENEY AND MARGARET SMALE PERFORM THE VAST MAJORITY OF THEIR WORK AT THEIR DESK WHICH IS LOCATED IN THE OFFICE. THEIR HOURS OF WORK ARE THE SAME AS OTHER OFFICE EMPLOYEES AND COMMENCE ONE HOUR LATER THAN THE PLANT EMPLOYEES. ON ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND HAVING REGARD FOR THE CLERICAL NATURE OF THE WORK PERFORMED IN THE OFFICE BY YVONNE FEENEY AND MARGARET SMALE, WE THEREFORE FIND THAT YVONNE FEENEY AND MARGARET SMALE ARE CLERICAL EMPLOYEES WHO SHARE A GREATER COMMUNITY OF INTEREST WITH THE OFFICE EMPLOYEES THAN THE EMPLOYEES EMPLOYED IN THE PLANT.

2. FOR THE PURPOSES OF CLARITY, WE THEREFORE DECLARE THAT YVONNE FEENEY AND MARGARET SMALE ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY DEFINED BY THE BOARD IN ITS DECISION DATED SEPTEMBER 10, 1969 AND THEREFORE WERE NOT ELIGIBLE TO VOTE. THE BOARD ALSO NOTES THE AGREEMENT OF THE PARTIES THAT SINCE BRENDA WESENBERG WAS ABSENT FROM WORK ON THE DATE THE VOTE WAS TAKEN AND DID NOT CAST A BALLOT, THERE WAS NO NECESSITY TO EXAMINE HER EMPLOYMENT STATUS.

3. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST BY ALL THOSE ELIGIBLE TO VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: NOVEMBER 26, 1969.

I DISSENT FROM THE DECISION OF THE MAJORITY FINDING THAT YVONNE FEENEY AND MARGARET SMALE ARE CLERICAL EMPLOYEES WHO SHARE A GREATER COMMUNITY OF INTEREST WITH THE OFFICE EMPLOYEES THAN THE EMPLOYEES EMPLOYED IN THE PLANT.

IT IS CLEAR TO ME FROM THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES THAT THE OFFICE WORK IS NOT CARRIED ON AT THE RESPONDENT'S PLANT IN SEAFORTH BUT RATHER AT ITS LOCATION AT PRESTON.

IT IS MY OPINION THAT BOTH EXAMINEES ARE CLEARLY PLANT CLERICAL EMPLOYEES.

THE EVIDENCE OF YVONNE FEENEY IS THAT SHE WAS HIRED AS, AND STILL IS, A PRODUCTION CLERK. SHE REPORTS TO THE PLANT SUPERINTENDENT, SORTS OUT "UPPER LEATHER TICKETS" ACCORDING TO CODE NUMBERS, AND PERSONALLY TAKES THESE TO THE CUTTING ROOM OF THE PLANT. THESE TICKETS CONTAIN THE INSTRUCTION TO THE CUTTERS ON HOW TO CUT THE SHOES, AND THE FOREMAN THEN DISTRIBUTES THESE TICKETS TO THE VARIOUS CUTTERS.

IN ADDITION, SHE FIGURES OUT THE AMOUNT OF LEATHER TO ALLOW EACH CUTTER FOR A PARTICULAR JOB, REFERRING TO THE TICKETS WHICH HAVE BEEN RETURNED TO HER DESK BY THE FOREMAN. SHE FIGURES OUT THE AMOUNT OF MONEY TO ALLOW EACH CUTTER FOR EACH PARTICULAR JOB, AND ALSO THE AMOUNT OF LOSS OR GAIN WITH RESPECT TO THE PREVIOUS DAY FOR EACH CUTTER. SHE ASCERTAINS THE AMOUNT OF LEATHER RECEIVED FOR A PARTICULAR DAY, THE AMOUNT OF LEATHER USED, AND THE AMOUNT OF LEATHER ALLOTTED. IN ADDITION TO TAKING "LEATHER LINING TICKETS AND HEEL PAD TICKETS" TO THE FOREMAN IN THE PLANT, SHE TAKES SAMPLES INTO THE PLANT.

MARGARET SMALE, LIKEWISE, IS CLASSIFIED AS A PRODUCTION CLERK. SHE RECEIVES SEQUENCE SHEETS FROM THE TIME-STUDY ENGINEER WHICH DESCRIBE HOW EACH SHOE IS TO BE MADE, SHE WRITES UP A STENCIL WHICH SHE RUNS OFF ON A DUPLICATING MACHINE AND THESE STENCILS ARE STAPLED TO THE PRODUCTION TICKETS WHICH YVONNE FEENEY TAKES INTO THE PLANT.

ROBERT WALTERS, THE PLANT SUPERINTENDENT, STATED THAT ALL STANDARD OFFICE WORK WAS DONE AT THE RESPONDENT'S PRESTON LOCATION.

HAVING REGARD TO THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES, I WOULD FIND THAT YVONNE FEENEY AND MARGARET SMALE, BOTH OF WHOM SPEND CONSIDERABLE TIME IN THE PLANT IN CONNECTION WITH THE DUTIES ABOVE DESCRIBED, ARE PLANT CLERICAL EMPLOYEES HAVING A COMMUNITY OF INTEREST WITH THE PLANT EMPLOYEES.

ACCORDINGLY, I WOULD HAVE INCLUDED SUCH PERSONS IN THE VOTING CONSTITUENCY DEFINED BY THE BOARD IN ITS DECISION OF SEPTEMBER 10, 1969 AND FOUND THAT THEY WERE ELIGIBLE TO VOTE.

16480-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT)
V. WENTWORTH LODGE (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND H. F. IRWIN.

DECISION OF THE BOARD (BOARD MEMBER D. B. ARCHER
DISSENTING IN PART): NOVEMBER 24, 1969.

1. THE BOARD NOTES THE AGREEMENT OF THE PARTIES AS
FOLLOWS:

(A) THAT THE NAMES HAZEL TROWER (TRAVER) AND
ERMA WILSON ARE TO BE DELETED FROM THE
LIST OF EMPLOYEES;

(B) THAT THE FOLLOWING PERSONS ARE NOT INCLUDED
IN THE BARGAINING UNIT:

(I) EDWARD COOPER, BERNICE DALES, MARION
JOHNSTONE AND MARLENE RAYNER;

(II) LOUISA DELOTTINVILLE, MARY DUNPHY,
MARGARET JOHNSTONE AND PATRICIA
TROBRIDGE;

(C) THAT THE FOLLOWING PERSONS ARE INCLUDED IN
THE BARGAINING UNIT:

(I) HAZEL WILSON AND MARILYN WOOD;

(II) EARL DOUGHERTY, MARY LINDLEY,
ANNE ROUGHSEDGE AND ANNA ZUSPAAN;

(D) MRS. A. NEWSHAM IS INCLUDED IN THE BARGAINING
UNIT; AND THE NAME OF MARY ELLEN PATTON IS TO BE
EXCLUDED FROM THE LIST OF EMPLOYEES FILED BY THE
RESPONDENT AND SHE IS TO BE EXCLUDED FROM THE
BARGAINING UNIT.

2. HAVING REGARD TO THE REPORT OF THE EXAMINER DATED
OCTOBER 24TH, 1969, THE BOARD FINDS THAT DOROTHY CHRYSTMAN DOES
NOT EXERCISE MANAGERIAL FUNCTIONS AND IS INCLUDED IN THE BARGAIN-
ING UNIT; A MAJORITY OF THE BOARD FURTHER FINDS THAT THE DUTIES
AND RESPONSIBILITIES OF MARION WARWICK ARE OF A BORDERLINE NATURE;
HOWEVER, THERE IS SUFFICIENT INDEPENDENT DISCRETION TO CONSTITUTE
HER A PERSON WITH MANAGERIAL FUNCTIONS AND ACCORDINGLY, SHE IS
EXCLUDED FROM THE BARGAINING UNIT.

3. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR
HEARING TO DETERMINE ALL OUTSTANDING ISSUES INCLUDING THE ORIGIN-
ATION AND CIRCULATION OF THE STATEMENT OF DESIRE.

DISSENT OF BOARD MEMBER D. B. ARCHER: NOVEMBER 24, 1969.

1. I DISAGREE WITH THE EXCLUSION OF MRS. MARION WARWICK.
THE EXAMINER'S REPORT SHOWS MRS. WARWICK IS A COOK IN A DEPART-
MENT OF "ABOUT EIGHT" EMPLOYEES. THE HEAD COOK IS MR. ROY MITCHELL.
THE ARGUMENT FOR HER EXCLUSION IS THAT MRS. WARWICK ACTS AS HEAD
COOK IN THE ABSENCE OF MR. MITCHELL.

2. THE REPORT SHOWS THAT MRS. WARWICK "WENT ALONG WITH HER
USUAL WORK" WHETHER MR. MITCHELL WAS THERE OR NOT. SHE STATED TO

THE EXAMINER THAT SHE NEVER HAD ANYTHING TO DO WITH THE HIRING OF ANYONE IN THE KITCHEN AND SHE HAS NEVER ALLOWED TIME OFF. IT IS ADMITTED THAT "IN SO FAR AS GRIEVANCES OR COMPLAINTS OF EMPLOYEES ARE CONCERNED SHE WOULD IMAGINE THAT IF THEY WERE NOT SATISFIED WITH MR. MITCHELL'S HANDLING OF THE SITUATION THAT THE INDIVIDUALS CONCERNED WOULD GO DIRECTLY TO MR. WINGROVE, THE LODGE ADMINISTRATOR."

3. THE TOTAL NUMBER OF STAFF WORKING FOR MRS. WARWICK AT ANY ONE TIME IS AT MOST FOUR AND AT LEAST THREE.

4. I DO NOT BELIEVE SUCH A PERSON EXERCISES MANAGERIAL FUNCTIONS OR CONTROLS THAT WOULD EXCLUDE HER FROM THE BARGAINING UNIT.

16628-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CANADA SAFEWAY LIMITED (RESPONDENT) V. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: R. P. ARMSTRONG, CLIFF EVANS, T. G. BASTEDO FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; VIC PATHE, TIM ARMSTRONG FOR THE INTERVENER.

DECISION OF THE BOARD: NOVEMBER 27, 1969.

1. THE APPLICANT APPLIED FOR CERTIFICATION ON AUGUST 25TH, 1969 AND SEEKS A BARGAINING UNIT COMPOSED OF ALL EMPLOYEES WITH CERTAIN EXCEPTIONS THAT ARE NOT MATERIAL. THE INTERVENER FILED AN APPLICATION FOR CERTIFICATION ON SEPTEMBER 4TH, 1969 AND SEEKS A BARGAINING UNIT COMPOSED OF ALL MEAT DEPARTMENT EMPLOYEES. THERE IS THEREFORE A CONTEST BETWEEN THE APPLICANT AND THE INTERVENER FOR THE MEAT DEPARTMENT EMPLOYEES. IN ADDITION CERTAIN CHARGES WERE MADE BY THE INTERVENER.

2. IT APPEARS THAT AT THE TIME OF THE APPLICATION THE RESPONDENT COMPANY HAD OPENED A NEW STORE AND AT THE DATE OF APPLICATION BY THE APPLICANT NONE OF THE EMPLOYEES IN THE MEAT DEPARTMENT WERE EMPLOYED BY THE RESPONDENT, ALTHOUGH IT WAS AGREED THAT THEY WERE SO EMPLOYED AT THE DATE OF APPLICATION BY THE INTERVENER. THE TERMINAL DATE FOR THIS APPLICATION WAS SEPTEMBER 4TH, 1969, AND THE DATE OF THE FIRST HEARING WAS SEPTEMBER 22ND, 1969.

3. THE APPLICANT SUBMITTED THAT THE BOARD SHOULD APPLY SECTION 77(3) TO THE INTERVENER'S APPLICATION. FOR CONVENIENCE WE SET OUT THE PROVISIONS OF THE LABOUR RELATIONS ACT WHICH ARE RELEVANT TO THIS APPLICATION:

77(3) "NOTWITHSTANDING SECTIONS 5 AND 43, WHERE AN APPLICATION HAS BEEN MADE FOR CERTIFICATION OF A TRADE UNION AS BARGAINING AGENT FOR EMPLOYEES IN A BARGAINING UNIT ... AND A FINAL DECISION OF THE APPLICATION HAS NOT BEEN ISSUED BY THE BOARD AT THE TIME A SUBSEQUENT APPLICATION FOR SUCH CERTIFICATION ... IS MADE WITH RESPECT TO ANY OF THE EMPLOYEES AFFECTED BY THE ORIGINAL APPLICATION, THE BOARD MAY,

(A) TREAT THE SUBSEQUENT APPLICATION AS HAVING BEEN MADE ON THE DATE OF THE MAKING OF THE ORIGINAL APPLICATION;

(B) POSTPONE CONSIDERATION OF THE SUBSEQUENT APPLICATION UNTIL A FINAL DECISION HAS BEEN ISSUED ON THE ORIGINAL APPLICATION AND THEREAFTER CONSIDER THE SUBSEQUENT APPLICATION BUT SUBJECT TO ANY FINAL DECISION ISSUED BY THE BOARD ON THE ORIGINAL APPLICATION; OR

(C) REFUSE TO ENTERTAIN THE SUBSEQUENT APPLICATION."

7(1) "UPON AN APPLICATION FOR CERTIFICATION, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND THE NUMBER OF EMPLOYEES IN THE UNIT WHO WERE MEMBERS OF THE TRADE UNION AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77."

4. THE APPLICANT SUBMITS THAT PURSUANT TO THE PROVISIONS OF SECTION 77(3) THAT THE BOARD SHOULD POSTPONE CONSIDERATION OR REFUSE TO ENTERTAIN THE SUBSEQUENT APPLICATION BY THE INTERVENER OR IN THE ALTERNATIVE THAT THE BOARD SHOULD TREAT THE SUBSEQUENT APPLICATION AS HAVING BEEN MADE ON THE DATE OF THE MAKING OF THE ORIGINAL APPLICATION PURSUANT TO SECTION 77(3)(A). THE APPLICANT SUBMITS THAT IF THE BOARD TREATS THE APPLICATION AS HAVING BEEN MADE ON THE DATE OF THE ORIGINAL APPLICATION THEN SECTION 7(1) IS INVOKED AND THE INTERVENER WILL THEN BE DENIED STATUS AS A PARTY TO THESE PROCEEDINGS BECAUSE NONE OF THE EMPLOYEES WHOM THE INTERVENER CLAIMS AS MEMBERS WERE EMPLOYED ON THE DATE OF APPLICATION.

5. THE PURPOSE OF SECTION 7(1) HAS BEEN DEALT WITH BY THE ONTARIO COURT OF APPEAL IN REGINA V ONTARIO LABOUR RELATIONS BOARD EX PARTE HANNIGAN 67 CLC 11278. SHORTLY, THE PURPOSE OF THAT SECTION AS STATED IN THAT CASE IS TO ENABLE THE BOARD TO ASCERTAIN THE TOTAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME OF APPLICATION IN ORDER TO DETERMINE THE PERCENTAGE RELATIONSHIP OF THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WHO ARE MEMBERS OF THE TRADE UNION TO THE TOTAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT. THE BOARD MAY THEN DISMISS THE APPLICATION, ORDER A REPRESENTATION VOTE OR CERTIFY THE APPLICANT PURSUANT TO THE REMAINING PROVISIONS IN SECTION 7 OF THE ACT. OR TO PUT THE MATTER IN LABOUR RELATIONS TERMINOLOGY THE EFFECT OF SECTION 7(1) IS TO ENABLE THE BOARD TO DETERMINE THE COUNT AS OF A GIVEN DATE.

6. WE ARE OF THE OPINION THAT THE DATE OF APPLICATION REFERRED TO IN SECTION 7 IS NOT RELATED TO THE QUESTION OF STATUS. THE QUESTION OF STATUS FALLS TO BE DETERMINED BY ASKING WHETHER OR NOT THE PERSON THAT SEEKS TO BE HEARD MAY BE AFFECTED BY THE BOARD'S DETERMINATION? IF HE MAY BE AFFECTED THEN HE HAS AN INTEREST IN THE PROCEEDING AND SHOULD BE HEARD. SEE ESSEX HEALTH ASSOCIATION 1967 FEB. OLRB P. 885.

7. THE EMPLOYEES REPRESENTED BY THE INTERVENER MAY BE AFFECTED BY THE BOARD'S DETERMINATION IN THIS CASE IN THAT THE BOARD MAY BE CHARTING A FUTURE COURSE OF COLLECTIVE BARGAINING FOR THESE EMPLOYEES BY DETERMINING WHETHER OR NOT THEY FALL INTO A BARGAINING UNIT THAT THE BOARD FINDS APPROPRIATE; ALSO THE RIGHT TO BE REPRESENTED BY A TRADE UNION OF THEIR OWN CHOICE IS BEING DETERMINED. WE THEREFORE DETERMINE THAT THE INTERVENER HAS STATUS AS A PARTY TO THESE PROCEEDINGS.

8. BECAUSE OF THE ALLEGATIONS WITH RESPECT TO BUILD UP WE ARE NOT AT THIS TIME DETERMINING WHETHER THE INTERVENER HAS STATUS FOR THE PURPOSE OF OBTAINING CERTIFICATION.

9. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

16719-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWN OF FOREST (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. MURRAY AND W. A. ACTON FOR THE APPLICANT; C. G. RIGGS FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
R. W. TEAGLE: NOVEMBER 27, 1969.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE PUBLIC WORKS MANAGER AND ROADS SUPERINTENDENT, PERSONS ABOVE THE RANK OF PUBLIC WORKS MANAGER AND ROADS SUPERINTENDENT, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN AND WHAT WAS SUBMITTED BY COUNSEL AT THE HEARING, THE BOARD FURTHER FINDS THAT ALVIN STEWARDSON, PUBLIC WORKS MANAGER AND ROAD SUPERINTENDENT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 25, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER E. BOYER: NOVEMBER 27, 1969.

1. I DISSENT, BUT ONLY WITH RESPECT TO THE FINDING OF THE MAJORITY ON THE STATUS OF ALVIN STEWARDSON. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I FIND THAT ALVIN STEWARDSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND SHOULD, THEREFORE, BE INCLUDED IN THE BARGAINING UNIT.

16755-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
YORK SANITATION COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
H. F. IRWIN: NOVEMBER 18, 1969.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN YORK COUNTY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, WE FIND THAT GORDON FAIREY, A PERSON CLASSIFIED BY THE RESPONDENT AS FOREMAN, ASSIGNS WORK AND IS IN SOLE CHARGE OF THE OPERATION IN THE ABSENCE OF THE RESPONDENT'S OFFICERS. HE HAS THE POWER TO DISCIPLINE AND HAS EXERCISED THIS POWER, HAS TRANSFERRED EMPLOYEES AND HAS EFFECTIVELY RECOMMENDED WAGE INCREASES. IN VIEW OF HIS POWER TO MAKE INDEPENDENT DECISIONS WHICH MATERIALLY AFFECT THE EMPLOYMENT RELATIONSHIP OF THE EMPLOYEES, WE FIND THAT GORDON FAIREY EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 2, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER E. BOYER: NOVEMBER 18, 1969.

I DISSENT. I WOULD FIND THAT GORDON FAIREY HAS POWERS SIMILAR TO THOSE EXERCISED BY LEAD HANDS AND ACCORDINGLY DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS THEREFORE AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

16771-69-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS
INTERNATIONAL UNION - A.F.L.-C.I.O.-C.L.C. LOCAL 197 (APPLICANT)
V. BURLINGTON HOTEL COMPANY LIMITED (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: W. KOWALCHUK, W. ADAMS, EDWARD WALLACE
FOR THE APPLICANT; HARVEY A. BERESFORD, BILL JANOWSKI, ALEX SMITKO
FOR THE RESPONDENT; JOHN L. JASKULA, BOLESŁAW MARCHEWKA FOR THE
GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND O. HODGES: NOVEMBER 10, 1969.

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3. THE BOARD FURTHER FINDS THAT ALL WAITERS, TAPMEN AND
BARTENDERS AT THE SHERWOOD INN, BRANT STREET AT BURLINGTON, SAVE
AND EXCEPT OWNERS AND MANAGERS AND PERSONS REGULARLY EMPLOYED
FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOY-
EES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WAS FILED WITH THE BOARD IN THIS MATTER A STATE-
MENT OF DESIRE TO OPPOSE THE APPLICATION SIGNED BY FOUR EMPLOYEES
OF THE RESPONDENT. THE RESPONDENT FILED LISTS OF EMPLOYEES OF
WHOM EIGHT WOULD BE INCLUDED FOR THE PURPOSES OF THE COUNT. THE
APPLICANT HAS FIVE COMBINATION APPLICATIONS FOR MEMBERSHIP CARDS
WHICH CORRESPOND TO THOSE PERSONS INCLUDED FOR THE PURPOSES OF
THE COUNT. HOWEVER, THREE OF FOUR PERSONS WHO SIGNED THE STATE-
MENT OF DESIRE ARE ALSO CLAIMED BY THE APPLICANT AS MEMBERS.
THEREFORE, IF WEIGHT WAS GIVEN TO THE PETITION IT WOULD REDUCE
THE UNQUALIFIED MEMBERSHIP OF THE APPLICANT TO LESS THAN FIFTY-
FIVE PER CENT AND THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH
CIRCUMSTANCES, WOULD DIRECT THAT A REPRESENTATION VOTE BE HELD.
ON THE AFTERNOON OF THE DAY BEFORE THAT HEARING THE APPLICANT
FILED CHARGES AGAINST THE PETITION. THE RESPONDENT AND THE OB-
JECTORS ARGUED AT THE HEARING THAT THEY WERE READY TO PROCEED
IN THE USUAL COURSE BUT HAVING REGARD TO THE TIME THE CHARGES
WERE FILED, THAT THERE WERE NOT SUFFICIENT PARTICULARS GIVEN IN
THE CHARGES, THAT THEY WERE TAKEN BY SURPRISE AND WERE NOT PRE-
PARED TO MEET THE CHARGES, THE BOARD SHOULD NOT PERMIT THE
APPLICANT TO PROCEED WITH THE CHARGES. IN THE ALTERNATIVE, AT
THE VERY LEAST, AN ADJOURNMENT WAS REQUESTED WITH DIRECTIONS TO
THE APPLICANT TO FILE PARTICULARS. THE BOARD RESERVED ITS
DECISION AT THE HEARING AND ADJOURNED THE APPLICATION UNTIL THE
QUESTION CONCERNING THE CHARGES WAS DETERMINED.

5. THIS APPLICATION WAS MADE ON SEPTEMBER 26TH, 1969 AND THE TERMINAL DATE WAS FIXED FOR OCTOBER 6TH, 1969. THE PETITION WAS RECEIVED BY THE BOARD ON THE TERMINAL DATE AND NOTICES OF THE PETITION WERE FORWARDED TO THE PARTIES BY LETTER DATED OCTOBER 7TH. THE CASE WAS LISTED FOR HEARING FOR OCTOBER 16TH, 1969. AT ABOUT 3:00 P.M. ON OCTOBER 15TH THE APPLICANT FILED CHARGES ALLEGING THAT "THE MEMBERS WHO SIGNED THE PETITION HAVE BEEN COERCED AND OFFERED INCREASED WAGES." THE BOARD NOTIFIED THE OTHER PARTIES BY TELEPHONE THAT DAY OF THESE CHARGES. AT THE HEARING THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD THAT THE INFORMATION CONCERNING THE CHARGES WAS FIRST MADE KNOWN TO THE UNION ON OCTOBER 15TH AND THE CHARGES WERE FILED IMMEDIATELY THEREAFTER. BY LETTER DATED OCTOBER 18TH THE APPLICANT PROVIDED CERTAIN PARTICULARS RELATIVE TO THE CHARGES WHEREIN EVENTS ARE ALLEGED TO HAVE TAKEN PLACE ON OCTOBER 4TH AND OCTOBER 6TH CONCERNING EMPLOYEES OF THE RESPONDENT INVOLVED IN THIS MATTER. THERE WAS NO EXPLANATION GIVEN BY THE APPLICANT OF ANY REASON FOR THIS INFORMATION NOT BEING CONVEYED TO IT BETWEEN THOSE DATES AND OCTOBER 15TH.

6. WHILE WE ACCEPT THE APPLICANT'S POSITION THAT IT FILED THE CHARGES IMMEDIATELY UPON RECEIVING THE INFORMATION, IT HAS OFTEN BEEN HELD BY THIS BOARD THAT THERE IS A DUTY ON PARTIES TO AN APPLICATION TO INVESTIGATE THE CIRCUMSTANCES SURROUNDING THE APPLICATION AND TO MAKE ANY CHARGES AT AN EARLY TIME TO COMPLY WITH SECTION 47(2) OF THE RULES AND REGULATIONS. THE REASON FOR THIS IS TO PREVENT UNDUE DELAY, EMBARRASSMENT AND ADDITIONAL EXPENSES TO THE PARTIES WHO, AS IN THE PRESENT MATTER, ARE CAUGHT BY SURPRISE WITH NO REASONABLE TIME TO PREPARE A DEFENCE TO ANY CHARGES BY THE HEARING DATE. A RECENT CASE RELATING TO THIS MATTER IS THE ARO OF CANADA LIMITED OLRB MONTHLY REPORT FEBRUARY 1969 PAGE 1181; WHERE COUNSEL FOR THE OBJECTORS ASKED AT THE HEARING FOR LEAVE TO FILE PARTICULARS OF IRREGULARITIES PERTAINING TO THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THAT MATTER. HE ADMITTED HIS CLIENTS KNEW OF THE IRREGULARITIES AT LEAST A WEEK PRIOR TO THE HEARING AND ADMITTED THEY HAD BEEN DRAWN TO THE ATTENTION OF ANOTHER MEMBER OF HIS FIRM, A WEEK PRIOR TO THE HEARING. THE COUNSEL AT THE HEARING, HOWEVER, HAD ONLY BEEN ADVISED THE DAY BEFORE THE HEARING. FLECK MANUFACTURING LIMITED CASE 62 CLLC 1064 STATES AS FOLLOWS:-

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 (NOW SECTION 47) OF THE RULES, IS

OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

THE BOARD ALSO SAID AT PAGE 1183:

"IT IS CLEAR FROM AN EXAMINATION OF THE CASES DECIDED SINCE FLECK MANUFACTURING LIMITED THAT IN FACT SITUATIONS SIMILAR TO THE PRESENT CASE THE BOARD HAS REFUSED A REQUEST FOR AN ADJOURNMENT. SEE FOR EXAMPLE SEAWAY APPAREL LIMITED, O.L.R.B. MONTHLY REPORT, MAY 1967, P. 145; KING OPTICAL COMPANY, O.L.R.B. MONTHLY REPORT, JANUARY 1968, P. 952; NATIONAL STARCH & CHEMICAL CO. (CANADA) LTD., O.L.R.B. MONTHLY REPORT, SEPTEMBER 1968, P. 597 AND AMERICAN OPTICAL COMPANY CANADA LIMITED, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1968, P. 602."

7. WITH REFERENCE TO THE SEAWAY APPAREL LIMITED CASE [SUPRA] WE HAVE REFERENCE TO PARAGRAPHS 4 AND 6 THEREOF WHICH ARE AS FOLLOWS:

"4. COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT HE HAD MADE HIS ALLEGATIONS AS SOON AS HE HAD BEEN INSTRUCTED WITH RESPECT TO THEM, BUT HE ADMITTED THAT THE OFFICIALS OF THE RESPONDENT "HAD AN INKLING" OF THEM AT THE TIME THE APPLICATION WAS MADE, AND HE GAVE NO FURTHER EXPLANATION TO THE BOARD FOR THE LATE FILING OF THE ALLEGATIONS."

"6. HAVING REGARD TO THE UNTIMELY NATURE OF THE RESPONDENT'S ALLEGATIONS AND TO THE ABSENCE OF SATISFACTORY EXPLANATION FOR THEIR LATENESS, IT IS OUR RULING THAT THESE ALLEGATIONS WILL NOT BE ENTERTAINED."

THE ABOVE MENTIONED CASE IS QUITE SIMILAR TO THE INSTANT MATTER AS HERE IT IS CLEAR THAT ALTHOUGH THE UNION REPRESENTATIVE ACTED IMMEDIATELY ON RECEIVING THE INFORMATION, SUCH INFORMATION WAS READILY AVAILABLE FROM THE EMPLOYEES CONCERNED PRIOR TO THE TERMINAL DATE. THERE IS A RESPONSIBILITY IMPOSED ON PARTIES BY THE PROVISIONS OF RULE 47 TO MAKE SUCH INQUIRIES AS THEY MAY DEEM NECESSARY AT AN EARLY STAGE AND HAD THIS BEEN DONE IN THIS MATTER WHEN THE INFORMATION WAS READILY AVAILABLE, THE CHARGES NOW FILED COULD HAVE BEEN MADE ON OR ABOUT THE TERMINAL DATE WHICH WOULD HAVE GIVEN PROPER NOTICE TO THE OTHER PARTIES INVOLVED. THERE IS NO SATISFACTORY EXPLANATION FROM THE APPLICANT FOR THE DELAY IN THIS REGARD.

8. HAVING REGARD TO ALL THE CIRCUMSTANCES OF THIS MATTER, THE PRIOR DECISIONS OF THE BOARD SET OUT ABOVE AND THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, OUR RULING IS THAT THE ALLEGATIONS OF THE APPLICANT WITH RESPECT TO THE STATEMENT OF DESIRE FILED IN THIS MATTER WILL NOT BE ENTERTAINED BY THE BOARD.

9. THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF THE BOARD'S USUAL INQUIRY INTO THE CIRCUMSTANCES SURROUNDING THE ORIGATION AND CIRCULATION OF THE PETITION.

16830-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF TORONTO (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: M. LEVINSON, F. L. TAYLOR FOR THE APPLICANT; N. MACL. ROGERS, Q.C., DOUGLAS GILMOUR FOR THE RESPONDENT; W. G. PHELPS, E. R. SNELL, ORPHA HICKLING FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: NOVEMBER 14, 1969.

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3. IN THIS CASE CHARGES WERE FILED ON FRIDAY, NOVEMBER 7TH 1969 AT 5:30 P.M., AND THE HEARING TOOK PLACE ON MONDAY, NOVEMBER 10TH 1969. AT THE HEARING, COUNSEL FOR THE APPLICANT OBJECTED TO THE LATE FILING OF THE CHARGES PARTICULARLY SO BECAUSE THE GROUP OF EMPLOYEES HAD BEEN POSSESSED OF THE KNOWLEDGE WITH RESPECT TO THESE CHARGES FOR SOME TIME. THE APPLICANT MOVED THAT THE BOARD NOT HEAR EVIDENCE RESPECTING THE CHARGES.

4. DURING THE HEARING IT BECAME APPARENT TO THE BOARD THAT THE MATTER WOULD INVOLVE THE TAKING OF EVIDENCE AND THAT THERE WAS A POSSIBILITY THAT AN EXAMINER MIGHT BE APPOINTED. THE BOARD HAS HEARD ARGUMENT FROM COUNSEL WITH RESPECT TO THE BARGAINING UNIT AND COUNSEL WAS THEN PREPARED TO ADDUCE EVIDENCE WITH RESPECT TO CERTAIN FACTS THAT REMAINED IN DISPUTE. IT APPEARED THAT THE ADDUCING OF EVIDENCE AND ARGUMENT WOULD OCCUPY THE BOARD FOR AT LEAST ONE FULL DAY AND PERHAPS TWO, AND ACCORDINGLY THIS CASE WAS ADJOURNED TO A DATE TO BE FIXED BY THE REGISTRAR IN ORDER THAT THE EVIDENCE COULD BE ADDUCED AND ARGUMENT SUBMITTED. THE APPLICANT DID NOT REQUEST THE ADJOURNMENT AND INDICATED IT WAS PREPARED TO PROCEED WITH ITS EVIDENCE ON THE DATE OF HEARING.

5. THE BOARD DOES NOT CONDONE THE LATE FILING OF CHARGES SUCH AS APPEAR HERE. HOWEVER, IN VIEW OF THE ADJOURNMENT AND FOR THE REASONS SET OUT IN MUIRHEAD INSTRUMENTS LIMITED CASE, 1966 OCTOBER OLRB MTHLY. REP. 499, THE MOTION BY THE APPLICANT IS DENIED.

6. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR HEARING TO DETERMINE ALL OUTSTANDING ISSUES INCLUDING HEARING EVIDENCE WITH RESPECT TO THE CHARGES.

16861-69-R: INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS (APPLICANT) v. COOPER-WEEKS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND R. ARMSTRONG FOR THE APPLICANT. J. P. SANDERSON AND J. COOPER FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 3, 1969.

1. BASED ON THE EVIDENCE ADDUCED AT THE HEARING OF THIS APPLICATION, THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FINDS THAT THE APPLICANT HAS JURISDICTION TO ACCEPT INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 501 ALLIANCE AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. ALL OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT TAKES THE FORM OF APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT TRADE UNION. WHILE THE APPLICATIONS BEAR THE SIGNATURES OF PERSONS APPLYING FOR MEMBERSHIP, NO MONEY PAYMENT ON ACCOUNT OF AN INITIATION FEE IS SHOWN ON THE FACE OF THE APPLICATION CARDS AND NO RECEIPTS OF ANY KIND WERE FILED. ON THE REVERSE BLANK SIDE OF THE APPLICATION FORMS, HOWEVER, THERE APPEARS THE SIGNATURE OF A "ROSS L. ARMSTRONG", WHO SIGNED THE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, AND IS SHOWN ON THAT FORM AS AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT. IN ADDITION TO HIS SIGNATURE, ON THE REVERSE SIDE OF EACH OF THE APPLICATION FORMS THERE IS WRITTEN A DATE, ALL OF THE DATES BEING IN AUGUST, SEPTEMBER OR OCTOBER OF THIS YEAR. AS WELL, THERE APPEARS THE LETTERS "PD", WHICH WE INTERPRET AS A SHORT FORM FOR THE WORD "PAID". NO MONETARY AMOUNT, HOWEVER, IS SHOWN ON THE REVERSE SIDE NOR IS THERE ANY INDICATION AS TO THE PURPOSE OF THE "PAYMENT" SHOWN.

4. COUNSEL FOR THE APPLICANT REQUESTED LEAVE OF THE BOARD TO CALL ARMSTRONG AS A WITNESS TO GIVE VIVA VOCE EVIDENCE RELATING TO THE EVIDENCE OF MEMBERSHIP. AFTER CONSIDERING HIS REPRESENTATIONS AND THOSE OF COUNSEL FOR THE RESPONDENT, THE BOARD MADE AN ORAL RULING ON THE APPLICANT'S REQUEST AT THE HEARING.

5. THE CHAIRMAN OF THE PANEL CITED SECTION 48(2) OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS WHICH PROVIDES THAT NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION SHALL BE ACCEPTED BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE OF MEMBERSHIP. THE BOARD RULED THAT THE EVIDENCE OF MEMBERSHIP AS FILED BY THE APPLICANT BY THE TERMINAL DATE OF THE APPLICATION DID NOT MEET THE BOARD'S REQUIREMENTS IN THAT IT DID NOT SHOW THAT ANY OF THE PERSONS WHO SIGNED APPLICATION FOR MEMBERSHIP CARDS IN THE APPLICANT PAID AT LEAST ONE DOLLAR ON HIS OWN BEHALF (SEE BOARD'S POLICY STATEMENT DATED FEBRUARY 16, 1951, WHICH WAS CONFIRMED ON AUGUST 29, 1967 IN THE METROPOLITAN LIFE INSURANCE CASE, OLRB M.R. AUG. 1967 P. 437). THE BOARD FURTHER RULED THAT THIS WAS A SUBSTANTIVE DEFECT IN THE EVIDENCE OF MEMBERSHIP AND NOT ONE WHICH COULD BE CORRECTED BY ORAL EVIDENCE UNDER THE LIMITATIONS IMPOSED BY SECTION 48(2) OF THE RULES. THE REQUEST OF COUNSEL FOR THE APPLICANT ACCORDINGLY WAS DENIED.

6. THE BOARD ACCORDINGLY IS NOT PREPARED TO ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS INDICATING THAT THE PERSONS WHOSE SIGNATURES APPEAR UPON THE APPLICATION CARDS ARE MEMBERS OF THE APPLICANT UNION.

7. THE BOARD THEREFORE FINDS ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS

MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 23, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. THE APPLICATION ACCORDINGLY IS DISMISSED.

16845-69-R: BRANTOX DRIVERS' ASSOCIATION (APPLICANT) V. BRANTOX HOLDINGS LIMITED (RESPONDENT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: W. BERNARD CALDER, STUART CURRIE AND MAX BARBER FOR THE APPLICANT, DONALD S. MILLS AND GARY E. STRACHAN FOR THE RESPONDENT, ERNEST ROVET FOR THE INTERVENER.

DECISION OF THE BOARD: NOVEMBER 21, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS TO REPRESENT ALL EMPLOYEES OF THE RESPONDENT AT BRODHAGEN, GUELPH, BURGESSVILLE AND PARKHILL. BY ITS DECISION DATED OCTOBER 28, 1969, ON AGREEMENT OF THE PARTIES, THE BOARD POSTPONED FURTHER CONSIDERATION OF THIS APPLICATION UNTIL A FINAL DECISION HAD BEEN ISSUED IN AN APPLICATION BROUGHT BY LOCAL 647 WITH RESPECT TO THE BURGESSVILLE EMPLOYEES. A DECISION HAS NOW BEEN ISSUED WITH RESPECT TO THE APPLICATION OF LOCAL 647. FOLLOWING THE TAKING OF A REPRESENTATION VOTE IN THAT MATTER, IT APPEARED THAT THE MAJORITY OF THE EMPLOYEES AT BURGESSVILLE FAILED TO SUPPORT THE APPLICATION OF LOCAL 647 AND ITS APPLICATION WAS DISMISSED.

2. LOCAL 647, ALTHOUGH SERVED WITH NOTICE OF THIS APPLICATION, DID NOT FILE A FORMAL NOTICE OF INTERVENTION PRIOR TO OCTOBER 21, 1969, THE TERMINAL DATE OF THIS MATTER. HOWEVER, BY LETTER DATED OCTOBER 24, 1969, LOCAL 647 INTERVENED IN THE FOLLOWING MANNER:

WE REPRESENT MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647, AND HAVE BEEN ADVISED OF THE ABOVE-NOTED APPLICATION.

AS THE BOARD WILL BE AWARE, THERE IS A PENDING APPLICATION FOR CERTIFICATION (BOARD FILE No. 16257-69-R) COVERING THE EMPLOYEES AT THE COMPANY'S BURGESSVILLE DEPOT, IN WHICH A REPRESENTATION VOTE HAS BEEN HELD. CLEARLY, THE INSTANT APPLICATION, INsofar AS IT AFFECTS THE RESPONDENT'S BURGESSVILLE DEPOT CANNOT BE PROCEEDED WITH UNTIL THE EARLIER APPLICATION HAS BEEN DETERMINED. LOCAL 647 WILL BE REPRESENTED AT THE HEARING OF THIS MATTER ON MONDAY. OCTOBER 28, IN SUPPORT OF THIS SUBMISSION.

3. SINCE LOCAL 647 HAD AN APPLICATION PENDING BEFORE THE BOARD INVOLVING SOME OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED AND SINCE LOCAL 647 HAD FILED EVIDENCE OF MEMBERSHIP WITH RESPECT TO SOME OF THE RESPONDENT'S BURGESSVILLE EMPLOYEES PRIOR TO THE TERMINAL DATE IN THIS MATTER, THE BOARD PERMITTED LOCAL 647 TO PARTICIPATE AT THE FIRST HEARING AS A PARTY IN THESE PROCEEDINGS. THE BOARD DID NOT DEAL WITH THE ISSUE CONCERNING THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT AT THE FIRST HEARING IN THIS MATTER SINCE THE APPLICATION OF LOCAL 647 WAS AT THAT TIME PENDING AND IT WAS ON THE AGREEMENT OF THE PARTIES, INCLUDING LOCAL 647, THAT THE BOARD POSTPONED FURTHER CONSIDERATION OF THIS MATTER.

4. AT THE SECOND HEARING IN THIS CASE ON NOVEMBER 19TH, THE RESPONDENT OBJECTED TO LOCAL 647 PARTICIPATING IN THESE PROCEEDINGS AS A PARTY AND THE RESPONDENT BASED ITS OBJECTION ON THE PROVISIONS OF SECTION 9 AND SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. IT WAS THE RESPONDENT'S ARGUMENT THAT NOT ONLY HAD LOCAL 647 FAILED TO FILE A NOTICE OF INTERVENTION, FORM 11, AS REQUIRED BY SECTION 9 OF THE RULES, BUT ALSO FAILED TO SUBMIT EVIDENCE AS TO REPRESENTATION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 48.

5. AS WE HAVE SEEN FROM THE ABOVE, WHILE LOCAL 647 DID NOT FILE A FORMAL INTERVENTION IN FORM 11 ON OR BEFORE THE TERMINAL DATE, AS REQUIRED BY SECTION 9, IT DID FILE A LETTER OF INTERVENTION SHORTLY AFTER THE TERMINAL DATE AND PRIOR TO THE FIRST HEARING IN THIS MATTER. SINCE THERE WAS PENDING BEFORE THE BOARD AN APPLICATION FOR CERTIFICATION BY LOCAL 647 WITH RESPECT TO THE BURGESSVILLE EMPLOYEES AND LOCAL 647 HAD FILED EVIDENCE OF MEMBERSHIP IN THAT APPLICATION AND ALL SUCH EVIDENCE OF MEMBERSHIP WAS ON FILE WITH THE BOARD PRIOR TO THE TERMINAL DATE IN THIS MATTER, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, ENLARGED THE PRESCRIBED TIME BY THE RULES AND GAVE EFFECT TO THE LETTER OF INTERVENTION FILED BY LOCAL 647 AND PERMITTED LOCAL 647 TO PARTICIPATE IN THESE PROCEEDINGS AS A PARTY.

6. SINCE THESE PROCEEDINGS WERE POSTPONED ON AGREEMENT OF THE PARTIES, INCLUDING LOCAL 647, AND SINCE LOCAL 647 HAS ALREADY PARTICIPATED IN THESE PROCEEDINGS AS A PARTY AND HAS DEMONSTRATED THAT IT HAD AN INTEREST AT THE RELEVANT TIMES, THE BOARD FINDS THAT LOCAL 647 IS ENTITLED TO CONTINUE TO PARTICIPATE AS A PARTY IN THESE PROCEEDINGS AND THE OBJECTIONS OF THE RESPONDENT WITH RESPECT TO LOCAL 647 ARE DISMISSED.

7. DEALING NEXT WITH THE QUESTION OF THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT, TO WHICH THE RESPONDENT HAS AGREED, IT IS NOTED THAT IN ITS DECISION DATED AUGUST 8, 1969 IN THE APPLICATION BY LOCAL 647 (SEE BRANTOX HOLDINGS LIMITED CASE, OLRB MONTHLY REPORT, AUGUST 1969, P. 609) THE BOARD DETERMINED THAT ALL THE EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF BURGESSVILLE, WITH CERTAIN EXCEPTIONS, CONSTITUTED A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. THE APPLICANT AND THE RESPONDENT IN THE INSTANT CASE ADDUCED EVIDENCE TO SHOW THAT IN ADDITION TO THE BURGESSVILLE AND GUELPH LOCATIONS, WITH WHICH THE BOARD DEALT IN THE APPLICATION BY LOCAL 647, THE RESPONDENT HAS, AS OF SEPTEMBER 1969, ADDED THE TWO ADDITIONAL LOCATIONS AT BRODHAGEN AND PARKHILL TO ITS OPERATIONS. AGAIN, THE EVIDENCE ADDUCED IN SUPPORT OF THE APPLICANT'S AND RESPONDENT'S POSITION TENDED TO INDICATE THAT A GREATER DEGREE OF INTERCHANGE OF EMPLOYEES BETWEEN THE LOCATIONS NOW TAKES PLACE THAN TOOK PLACE AT THE TIME THE BOARD CONSIDERED THE QUESTION OF THE APPROPRIATENESS OF THE BARGAINING UNIT IN THE EARLIER APPLICATION. HOWEVER, APART FROM SUCH ADDITIONAL EVIDENCE AND IN ALL THE CIRCUMSTANCES OF THIS CASE, OF MORE SIGNIFICANCE IS THE FACT THAT THE TWO PARTIES WHO WILL SUBSEQUENTLY BE ENGAGED IN NEGOTIATIONS FOR THE BARGAINING UNIT HAVE AGREED THAT THE APPROPRIATE UNIT WOULD INCLUDE ALL EMPLOYEES AT THE FOUR LOCATIONS. WHILE THE BOARD HAS TAKEN INTO CONSIDERATION THE REPRESENTATIONS OF LOCAL 647 IN THIS MATTER, IT IS NOTED THAT SINCE THE MAJORITY OF THE EMPLOYEES AT THE BURGESSVILLE LOCATION FAILED TO SUPPORT THE APPLICATION OF LOCAL 647 AND WHILE SUCH EVIDENCE DIMINISHES THE INTEREST OF LOCAL 647, IT DOES NOT EXTINGUISH SUCH INTEREST. HOWEVER THAT MAY BE, THE FACT THAT LOCAL 647 DOES NOT AGREE TO THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS MATTER AND THE FACT THAT IT WILL NOT BE A PARTY TO ANY BARGAINING THAT TAKES PLACE BETWEEN THE APPLICANT AND THE RESPONDENT, THE OPPOSITION OF LOCAL 647 IS NOT SUFFICIENT OF ITSELF TO CAUSE THE BOARD TO FIND THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE.

8. THE MAIN CONSIDERATION TO BE DEALT WITH BY THE BOARD IS THE FACT THAT THE BOARD IN ITS DECISION OF AUGUST 8, 1969 DETERMINED THE EMPLOYEES AT THE BURGESSVILLE LOCATION FORMED AN APPROPRIATE UNIT. HOWEVER, A FACTOR WHICH WAS NOT BEFORE THE BOARD IN

THAT APPLICATION AND WITH WHICH THIS DIVISION OF THE BOARD MUST DEAL IS THE FACT THAT THE PARTIES WHO WILL BE BARGAINING, I.E. THE APPLICANT AND THE RESPONDENT, HAVE AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT. AS THE BOARD STATED IN THE CORPORATION OF THE TOWNSHIP OF MARKHAM CASE, OLRB MONTHLY REPORT, AUGUST 1969, P. 592, "THE BOARD SHOULD ALSO TAKE INTO ACCOUNT THE GENERAL PRACTICE IN THE PARTICULAR INDUSTRY AND MAY BE GUIDED BY THE AGREEMENT OF THE PARTIES". SINCE THE PARTIES WHO WILL BE BARGAINING HAVE AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT IN THE INSTANT CASE, THIS FACTOR TOGETHER WITH THE OTHER EVIDENCE IN THIS CASE OUTWEIGHS OTHER CONSIDERATIONS. FOR THE REASONS SET OUT ABOVE AND BECAUSE IT IS NOT CONTRARY TO ANY ESTABLISHED PRACTICE OF THE BOARD, THE BOARD FINDS THAT A MULTIPLE LOCALITY BARGAINING UNIT PROPOSED BY THE APPLICANT AND AGREED TO BY THE RESPONDENT IN THIS CASE IS AN APPROPRIATE BARGAINING UNIT.

9. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRODHAGEN, BURGESSVILLE, GUELPH AND PARKHILL, SAVE AND EXCEPT DRIVER SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF DRIVER SUPERVISOR AND FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS DISPATCHERS ARE NOT INCLUDED IN THE BARGAINING UNIT.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16903-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. NAVCO FOOD SERVICES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: C. EVANS AND H. JURCHUK FOR THE APPLICANT, C. G. RIGGS AND E. W. PIERCY FOR THE RESPONDENT, E. COUGLER AND W. CARROLL FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 13, 1969.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF PRESTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE RESPONDENT FILED A LIST OF EMPLOYEES, 23 OF WHOM ARE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 14 PERSONS, 13 OF WHOSE NAMES CORRESPOND WITH NAMES APPEARING ON THAT LIST. THE APPLICANT THEREFORE HAS ONE "LOST" CARD, THAT IS, EVIDENCE OF MEMBERSHIP FOR A PERSON NOT ON THE ABOVE LIST. THE EVIDENCE OF MEMBERSHIP FOR THAT PERSON, AS WELL AS THE EVIDENCE FOR ALL OTHER PERSONS, TAKES THE FORM OF A COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT FORM. THE SPACE INDICATING THE AMOUNT OF THE INITIATION FEE ON THE RECEIPT PORTION OF THE "LOST" CARD IS NOT COMPLETED. IN OTHER WORDS, NO MONETARY AMOUNT IS ENTERED IN THAT SPACE. EVEN IF THE BOARD WERE TO DISCOUNT THE "LOST" CARD, THE APPLICANT STILL HAS EVIDENCE OF MEMBERSHIP, WHICH MEETS THE BOARD STANDARDS, FOR OVER FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT.

5. COUNSEL FOR THE RESPONDENT SUBMITS THAT BY REASON OF THE FACT THAT NO INITIATION FEE IS SHOWN ON THE "LOST" MEMBERSHIP CARD, THE INFORMATION SET OUT IN FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, IS INACCURATE AND THAT ACCORDINGLY THE BOARD SHOULD NOT GIVE WEIGHT TO ANY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. BY PARAGRAPH 3 OF FORM 8, THE SIGNATORY TO THAT DOCUMENT, ON THE BASIS OF PERSONAL KNOWLEDGE OR INQUIRIES, STATES THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONIES PAID ON ACCOUNT OF THE INITIATION FEES AND THAT EACH MEMBER ON WHOSE BEHALF A RECEIPT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT AS COLLECTOR. SINCE NO INITIATION FEE IS SHOWN AS HAVING BEEN PAID ON THE "LOST" CARD, IT CANNOT BE SAID THAT THERE WAS AN IN-ACCURACY OR MISREPRESENTATION ON THE PART OF THE SIGNATORY TO THE FORM 8. THE BOARD ACCORDINGLY REJECTS THE SUBMISSION OF COUNSEL FOR THE RESPONDENT.

6. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE WHICH WAS SENT BY REGISTERED MAIL TO THE BOARD ON NOVEMBER 5TH, 1969, THE TERMINAL DATE SET FOR THIS APPLICATION. THE STATEMENT, WHICH EXPRESSES OPPOSITION TO THE APPLICATION, BEARS THE SIGNATURES OF 17 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. OF THAT NUMBER, 9 ARE CLAIMED IN MEMBERSHIP BY THE APPLICANT. ACCORDINGLY, IF THE BOARD WERE TO GIVE WEIGHT TO THE STATEMENT, THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN THE FIFTY-FIVE PER CENT OF THE PERSONS IN THE BARGAINING UNIT REQUIRED FOR OUTRIGHT CERTIFICATION. THE STATEMENT OF DESIRE THEREFORE IS RELEVANT IN THIS PROCEEDING.

7. BY TELEGRAM DATED NOVEMBER 10TH, 1969, WHICH WAS RECEIVED BY THE BOARD ON NOVEMBER 12TH, 1969, THE DATE OF THE HEARING OF THIS APPLICATION, THE APPLICANT FILED CHARGES ALLEGING MANAGEMENT SUPPORT OF THE STATEMENT OF DESIRE. THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES AS TO WHETHER THE BOARD SHOULD ENTERTAIN THE APPLICANT'S CHARGES HAVING REGARD TO THE TIME AT WHICH THEY WERE FILED. IN VIEW OF THE SHORT PERIOD OF TIME BETWEEN WHEN THE APPLICANT RECEIVED NOTICE FROM THE BOARD OF THE FILING OF THE STATEMENT OF DESIRE AND THE HEARING IN THIS MATTER, THE BOARD RULED THAT IT WAS PREPARED TO ENTERTAIN THE APPLICANT'S CHARGES AND THAT IN ALL THE CIRCUMSTANCES THE REPRESENTATIVE OF THE APPLICANT WAS ENTITLED TO THE ADJOURNMENT WHICH HE REQUESTED IN ORDER TO ENABLE HIM TO PREPARE HIS CASE IN SUPPORT OF THE CHARGES. THE BOARD FURTHER DIRECTED THAT THE REPRESENTATIVE OF THE APPLICANT PROVIDE FORTHWITH PARTICULARS OF THE CHARGES WHICH HE FILED.

8. THE REGISTRAR ACCORDINGLY IS DIRECTED TO LIST THIS APPLICATION FOR CONTINUATION OF HEARING FOR THE PURPOSE OF INQUIRING INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENT OF DESIRE AND TO ENTERTAIN THE CHARGES FILED BY THE APPLICANT WITH RESPECT TO THE STATEMENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

16919-69-R: THE SYNDICATE OF CONSTRUCTION WORKERS' UNION OF THE OTTAWA VALLEY (C.N.T.U.) (APPLICANT) V. LEONARD G. WEBER CONSTRUCTION (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: CLAUDE LEPAGE FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, R. KOSKIE FOR INTERVENER #1 AND INTERVENER #2.

DECISION OF THE BOARD: NOVEMBER 24, 1969.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF CONSTRUCTION EMPLOYEES OF THE RESPONDENT IN THE OTTAWA AREA.
2. THE APPLICANT HAD NOT ESTABLISHED ITS STATUS AS A TRADE UNION BEFORE THIS BOARD ON ANY PREVIOUS OCCASION. THE APPLICANT ACCORDINGLY WAS ADVISED BY THE REGISTRAR BY LETTER DATED NOVEMBER 3RD, 1969 THAT IT HAD TO BE PREPARED TO SATISFY THE BOARD AT THE HEARING IN THIS MATTER THAT IT WAS A TRADE UNION. BASED ON THE DOCUMENTARY EVIDENCE FILED BY THE REPRESENTATIVE OF THE APPLICANT AND HIS ORAL TESTIMONY, WE FIND THAT THE APPLICANT HAS NOT DISCHARGED THE ONUS UPON IT OF ESTABLISHING THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT (SEE ALCAN UNIVERSAL HOMES DIVISION OF ALCAN HOMES LIMITED CASE OLRB M.R. MARCH 1969, P. 551).
3. INTERVENER #1 (HEREINAFTER REFERRED TO AS THE LABOURERS) FILED AN EXECUTED COPY OF WHAT PURPORTS TO BE A COLLECTIVE AGREEMENT WITH THE RESPONDENT. THE DOCUMENT ON ITS FACE WOULD INDICATE THAT IT WAS EXECUTED ON OCTOBER 30TH, 1969, A DAY PRIOR TO THE FILING OF THE INSTANT APPLICATION. UNDER QUESTIONING, HOWEVER, FRANK MANONI, THE LABOURERS' REPRESENTATIVE WHO IS THE SIGNATORY TO THE PURPORTED AGREEMENT ON BEHALF OF THE UNION, ADMITTED THAT, IN FACT, HE DID NOT SIGN THE AGREEMENT UNTIL SOME TIME EARLY IN NOVEMBER, AFTER THE DATE OF THE FILING OF THIS APPLICATION. MOREOVER, ALTHOUGH MANONI CLAIMED THAT THE RESPONDENT HAD VOLUNTARILY RECOGNIZED THE LABOURERS AS BARGAINING AGENT FOR THE CONSTRUCTION LABOURERS IN ITS EMPLOY, HE ADMITTED THAT AT NO RELEVANT TIME DID THE LABOURERS HAVE ANY MEMBERSHIP AMONG THE RESPONDENT'S EMPLOYEES. THE BOARD ACCORDINGLY FINDS THAT THERE IS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE LABOURERS AND THE RESPONDENT.
4. IN VIEW, HOWEVER, OF THE INCOMPLETE NATURE OF THE EVIDENCE RELATING TO THE STATUS OF THE APPLICANT, THE BOARD IS NOT PREPARED AT THIS TIME TO FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF THE ACT.
5. THE APPLICATION ACCORDINGLY MUST BE DISMISSED.

16931-69-R: NIAGARA PENINSULA PRINTING PRESSMEN AND ASSISTANTS' UNION No. 425, A SUBORDINATE UNION OF INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. LINCOLN GRAPHICS LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: PURDY CHURCHILL FOR THE
APPLICANT; C. RIGGS, G. BROOKS FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 24, 1969.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN
THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE BOARD DECLARES THAT THE INTERNATIONAL TYPOGRAPHICAL
UNION, LOCAL 416, HAS ABANDONED ITS BARGAINING RIGHTS WITH RESPECT
TO THE RESPONDENT.

3. IN THIS CASE THE APPLICANT SUBMITTED MEMBERSHIP EVIDENCE
WHICH INDICATED THAT THE EMPLOYEES HAD MADE AN APPLICATION FOR
MEMBERSHIP IN THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS'
UNION OF NORTH AMERICA, HOWEVER, IT SHOULD BE NOTED THAT THE APPLI-
CANT IS A LOCAL UNION AND NOT THE INTERNATIONAL.

4. THE BOARD'S POLICY WITH RESPECT TO MEMBERSHIP EVIDENCE
IS THAT MEMBERSHIP IN AN INTERNATIONAL UNION DOES NOT CONSTITUTE
MEMBERSHIP IN A LOCAL UNION, ALTHOUGH MEMBERSHIP IN THE LOCAL UNION
MAY BE MEMBERSHIP IN THE INTERNATIONAL UNION. SEE EVVOY-MCLEAN
LIMITED 1969 FEBRUARY OLRB MTHLY. REP. 1224; MACDONALDS CONSOLIDATED
LIMITED 1969 AUGUST OLRB MTHLY. REP. 634. BECAUSE THE MEMBERSHIP
EVIDENCE IN THIS CASE DOES NOT CONSTITUTE MEMBERSHIP IN THE APPLI-
CANT, WE FIND THAT THE APPLICANT UNION DOES NOT HAVE THE REQUISITE
MEMBERSHIP TO ENTITLE IT TO EITHER CERTIFICATION OR A VOTE.

5. THE APPLICATION IS ACCORDINGLY DISMISSED.

16985-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. C & T
REINFORCING STEEL CO. LTD. (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: NOVEMBER 26, 1969.

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2. THE APPLICANT HAS APPLIED TO THE BOARD FOR CERTIFICATION AS THE BARGAINING AGENT FOR ALL RODMEN IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN IN THE BOARD'S GEOGRAPHIC AREA NUMBER 18. BOARD AREA No. 18 CONSISTS OF THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO. THERE IS ON FILE WITH THE BOARD A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. THIS COLLECTIVE AGREEMENT WAS SIGNED ON BEHALF OF THE APPLICANT AND THE RESPONDENT ON MAY 19, 1967 AND ARTICLE 1 READS, IN PART, AS FOLLOWS:

"THIS AGREEMENT SHALL BECOME EFFECTIVE ON THE DATE HEREOF AND SHALL REMAIN IN EFFECT UNTIL THE 31ST DAY OF MAY, A.D. 1969, AND SHALL CONTINUE IN FORCE FROM YEAR TO YEAR THEREAFTER UNLESS EITHER PARTY SHALL FURNISH THE OTHER WITH NOTICE OF TERMINATION OF, OR PROPOSED REVISION OF, THIS AGREEMENT NOT MORE THAN SIXTY DAYS AND NOT LESS THAN THIRTY DAYS BEFORE THE 31ST DAY OF MAY, A.D. 1969, OR IN A LIKE PERIOD IN ANY YEAR THEREAFTER."

ARTICLE 2(A) AND (B) PROVIDE.

"2(A) THE EMPLOYER RECOGNIZES THE UNION AS THE SOLE AND EXCLUSIVE BARGAINING AGENCY FOR ALL OF THE EMPLOYEES, SAVE AND EXCEPT NON-WORKING FOREMEN, AS DEFINED IN THIS AGREEMENT AND IN ALL MATTERS PERTAINING TO WAGES AND HOURS OF WORK. IT IS UNDERSTOOD AND AGREED THAT EVERYTHING HEREIN CONTAINED SHALL BE WORKING CONDITIONS.

(B) THE EMPLOYER AGREES TO EMPLOY AS RODMEN, AS A CONDITION OF EMPLOYMENT, ONLY MEMBERS IN GOOD STANDING WITH THE UNION AND THE UNION MUST GIVE PREFERENCE IN SUPPLYING MEN WITHIN ITS CRAFT TO THE EMPLOYER."

ARTICLE 5(A) DESCRIBES THE GEOGRAPHICAL AREA OF THE COLLECTIVE AGREEMENT:

"THE GEOGRAPHICAL AREA OF THIS AGREEMENT SHALL INCLUDE THE DISTRICT OF MUSKOKA AND ALL COUNTIES OF DUFFERIN, DURHAM, HALIBURTON, NORTHUMBERLAND, ONTARIO, PEEL, PETERBOROUGH, PRINCE EDWARD, SIMCOE, YORK AND VICTORIA, AND IN THE COUNTY OF HASTINGS, THE TOWNSHIPS OF: MARMORA, RAWDON, SIDNEY AND THURLOW. ALSO IN THE COUNTY OF HALTON, THE PREMISES OF THE FORD MOTOR COMPANY."

3. IT WOULD APPEAR THAT AT LEAST UNTIL MAY 31, 1969, THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT COVERING THE EMPLOYEES OF THE RESPONDENT IN BOARD AREA NUMBER 18. THIS COLLECTIVE AGREEMENT MAY HAVE RENEWED ITSELF IF TIMELY NOTICE OF PROPOSED REVISION WAS NOT GIVEN, OR THE APPLICANT AND THE RESPONDENT MAY OR MAY NOT HAVE SIGNED A NEW COLLECTIVE AGREEMENT. THE BARGAINING RIGHTS OF THE APPLICANT FOR RODMEN IN THE GEOGRAPHICAL AREA DESCRIBED IN THE COLLECTIVE AGREEMENT HAVE NOT BEEN TERMINATED IN ANY PROCEEDING BEFORE THE BOARD. IT WOULD APPEAR THAT THE APPLICANT IS ALREADY THE BARGAINING AGENT FOR THE EMPLOYEES FOR WHOM IT PRESENTLY SEEKS BARGAINING RIGHTS.

4. HAVING REGARD TO THE FOREGOING AND SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

16847-69-R: CHARLES FLONDER (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. (RESPONDENT).

(RE: REGAL HOTEL (HAMILTON) LIMITED)

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: C. FLONDER AND E. H. PALMER FOR THE APPLICANT, W. A. ADAMS AND E. WALLACE FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 18, 1969.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE BOARD ISSUED AN EARLIER DECISION IN THIS MATTER DATED OCTOBER 16TH, 1969. THE DIVISION OF THE BOARD WHICH ISSUED THE EARLIER DECISION WAS DIFFERENTLY CONSTITUTED. THE PARTIES AT THE HEARING OF THE APPLICATION, HOWEVER, AGREED TO THE SUBSTITUTION OF THE DIVISION OF THE BOARD SET OUT ABOVE FOR THE DIVISION WHICH ISSUED THE DECISION OF OCTOBER 16TH, 1969.

3. THE RESPONDENT AND THE REGAL HOTEL (HAMILTON) LIMITED WERE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM SEPTEMBER 16TH, 1968 UNTIL SEPTEMBER 15TH, 1969 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO WRITTEN NOTICE BEING GIVEN BY EITHER PARTY NOT MORE THAN SIXTY DAYS AND NOT LESS THAN THIRTY DAYS BEFORE THE TERMINATION DATE OF THE AGREEMENT. NOTICE OF ITS DESIRE TO BARGAIN FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT WAS ORIGINALLY GIVEN BY THE RESPONDENT TO THE REGAL HOTEL (HAMILTON) LIMITED ON AUGUST 5TH, 1969. THE RESPONDENT RECEIVED NO REPLY FROM THE HOTEL

AND NO BARGAINING TOOK PLACE BETWEEN THE PARTIES PRIOR TO THE RESPONDENT MAKING A REQUEST THAT THE MINISTER APPOINT A CONCILIATION OFFICER ON SEPTEMBER 26TH, 1969. ON OCTOBER 10TH, 1969, THE APPLICANT FILED THE INSTANT APPLICATION. BY LETTER DATED OCTOBER 15TH, 1969, OVER THE SIGNATURE OF THE DEPUTY MINISTER OF LABOUR, THE RESPONDENT WAS ADVISED THAT THE MINISTER HAD APPOINTED MR. J. DUNKLEE AS CONCILIATION OFFICER TO CONFER WITH THE PARTIES. MR. DUNKLEE, IN FACT, DID MEET WITH THE PARTIES ON OCTOBER 25TH, 1969.

4. THE RESPONDENT SUBMITS THAT THE INSTANT APPLICATION IS UNTIMELY ON THE GROUNDS THAT PURSUANT TO SECTION 43(2)(A) OF THE ACT AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS CAN ONLY BE MADE AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT. ACCORDING TO THE RESPONDENT, IN ORDER FOR AN APPLICATION TO BE TIMELY THE APPLICANT HAD TO FILE IT WITHIN A TWO MONTH PERIOD PRIOR TO SEPTEMBER 15TH, 1969, THE EXPIRY DATE OF THE AGREEMENT.

5. AT THE HEARING IN THIS MATTER, THE BOARD NOTED THAT BY SECTION 43(2)(A) AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS COULD ONLY BE MADE AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF THE OPERATION OF THE COLLECTIVE AGREEMENT, BUT THE PERIOD THEREAFTER DURING WHICH AN APPLICATION COULD STILL BE MADE WAS SUBJECT ONLY TO THE LIMITATIONS IMPOSED BY SECTION 46 OF THE ACT. SECTION 46 PROVIDES THAT WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 40, WHICH WAS DONE IN THE INSTANT CASE, NO APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS CAN BE MADE AFTER THE DATE WHEN THE COLLECTIVE AGREEMENT CEASED TO OPERATE OR THE DATE WHEN THE MINISTER APPOINTS A CONCILIATION OFFICER, WHICHEVER IS LATER. THE LATER DATE, THAT IS THE APPOINTMENT OF A CONCILIATION OFFICER, WAS MADE ON OCTOBER 15TH, FIVE DAYS AFTER THE DATE OF THE MAKING OF THE APPLICATION. THE BOARD AT THE HEARING ACCORDINGLY RULED THAT THE APPLICATION WAS TIMELY.

6. THE BOARD THEREUPON CALLED UPON THE APPLICANT TO ADDUCE EVIDENCE RELATING TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT FILED IN SUPPORT OF THE APPLICATION. THE DOCUMENT BEARS THE SIGNATURES OF ALL SEVEN PERSONS IN THE BARGAINING UNIT. BASED ON THE EVIDENCE OF THE APPLICANT, THE BOARD IS SATISFIED THAT THE DOCUMENT REPRESENTS A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO AFFIXED THEIR SIGNATURES TO IT.

7. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF REGAL HOTEL (HAMILTON) LIMITED IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING

THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON NOVEMBER 5, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

8. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF REGAL HOTEL (HAMILTON) LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF REGAL HOTEL (HAMILTON) LIMITED AT HAMILTON, SAVE AND EXCEPT SUPERVISOR AND PERSONS ABOVE THE RANK OF SUPERVISOR ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

16889-69-R: HAROLD LONDON (APPLICANT) V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

(RE: UNIQUE WINDOW CLEANING)

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: H. C. LONDON FOR THE APPLICANT, W. W. TILLER FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 5, 1969.

. . .

3. THIS IS AN APPLICATION UNDER SECTION 43 OF THE ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

4. HAROLD LONDON, THE APPLICANT, GAVE EVIDENCE IN SUPPORT OF HIS APPLICATION. LONDON IS AN EMPLOYEE OF UNIQUE WINDOW CLEANING. HE ORIGINALLY APPROACHED RICHARD ORTIZ, THE OWNER OF THE BUSINESS, AND SOUGHT HIS ADVICE AS TO HOW TO GO ABOUT TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. ORTIZ ADVISED HIM

TO GET THE REQUIRED FORMS TO MAKE SUCH AN APPLICATION FROM THIS BOARD. FOLLOWING THE ADVICE OF ORTIZ, LANDON SECURED THE PROPER FORM FROM THE BOARD WHICH HE THEN TOOK TO ORTIZ. ORTIZ COMPLETED THE APPLICATION FORM ON BEHALF OF LANDON AND LANDON SIGNED IT. LANDON THEN PREPARED A LETTER SIGNED BY HIMSELF SUPPORTING THE APPLICATION. AS WELL LANDON WENT TO THE HOME OF THE ONLY OTHER EMPLOYEE IN THE BARGAINING UNIT AND ADVISED HIM OF HIS (LANDON'S) COMMUNICATIONS WITH ORTIZ AND INQUIRED OF THAT EMPLOYEE WHETHER HE WISHED TO SUPPORT THE APPLICATION. THE EMPLOYEE CONCERNED AGREED TO DO SO AND IN THE PRESENCE OF LANDON COPIED OUT THE SAME FORM OF LETTER WHICH LANDON HAD WRITTEN AND SIGNED IT. LANDON THEREUPON MAILED THE APPLICATION AND THE TWO SUPPORTING LETTERS TO THE BOARD.

5. HAVING REGARD TO THE CLEAR EVIDENCE OF THE ASSISTANCE RENDERED TO THE APPLICANT BY HIS EMPLOYER IN THE PREPARATION OF THE APPLICATION, THE BOARD IS NOT PREPARED TO GRANT THE DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WHICH THE APPLICANT IS SEEKING.

6. THE APPLICATION ACCORDINGLY IS DISMISSED.

16965-69-R: JOE MOUSSALLEM AND ROBERTO VISSANI (APPLICANTS) V. UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (RESPONDENT) V. BENCO TELEVISION ASSOCIATES, A DIVISION OF REDIFON (CANADA) LIMITED (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. MOUSSALLEM AND R. VISSANI FOR THE APPLICANTS, R. RUSSELL AND P. MACNEIL FOR THE RESPONDENT, F. R. VON VEH AND C. J. EVANS FOR THE INTERVENER.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: NOVEMBER 26, 1969.

1. THIS IS AN APPLICATION MADE UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT.

2. THE TWO APPLICANTS, JOE MOUSSALLEM AND ROBERTO VISSANI, BOTH GAVE EVIDENCE RELATING TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT FILED IN SUPPORT OF THEIR APPLICATION.

WHILE THERE WAS SOME CONFUSION IN THE EVIDENCE OF VISSANI AND WE FIND THAT FOUR SIGNATURES WERE NOT IDENTIFIED, WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE THAT THE REMAINING SEVENTEEN SIGNATURES ON THE DOCUMENT REPRESENT A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THOSE EMPLOYEES WHO SIGNED IT.

3. HAVING REGARD TO THE EVIDENCE ADDUCED IN SUPPORT OF THE APPLICATION AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF BENCO TELEVISION ASSOCIATES, A DIVISION OF REDIFON (CANADA) LIMITED IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON NOVEMBER 18, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

4. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF BENCO TELEVISION ASSOCIATES, A DIVISION OF REDIFON(CANADA) LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF BENCO TELEVISION ASSOCIATES, A DIVISION OF REDIFON (CANADA) LIMITED AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

5. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

6. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: NOVEMBER 26, 1969.

I DISSENT.

BASED ON ALL THE EVIDENCE AS TO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT FILED IN SUPPORT OF THE APPLICATION, I AM NOT PREPARED TO GIVE WEIGHT TO THE DOCUMENT. ACCORDINGLY, I WOULD DISMISS THE APPLICATION.

INDEXED ENDORSEMENT - PROSECUTION

16677-69-U: TORONTO CONSTRUCTION ASSOCIATION, CANADA BUILDING MATERIALS LIMITED, COMMUNITY BUILDING SUPPLIES LIMITED, DUFFERIN MATERIALS & CONSTRUCTION LTD., KILMER VAN NOSTRAND CO. LIMITED, MCCORD & COMPANY, A DIVISION OF S.P. & M. MATERIALS LIMITED SUCCESSOR TO S. MCCORD & CO. LTD., PREMIER CONCRETE PRODUCTS DIVISION OF LAKE ONTARIO CEMENT LIMITED SUCCESSOR TO PREMIER BUILDING MATERIALS (DIVISION OF LAKE ONTARIO CEMENT LIMITED), RICHVALE REDI-MIX LIMITED (APPLICANTS) V. ALEX MAIN AND CLIVE BALLENTINE (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: B. W. BINNING, N. MOXON AND R. V. BRADLEY FOR THE APPLICANTS AND S. L. ROBINS, Q.C., FOR THE RESPONDENTS.

DECISION OF THE CHAIRMAN, G. W. REED, Q.C.: NOVEMBER 5, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS.

2. IT IS ALLEGED THAT THE RESPONDENTS, AS OFFICERS AND OFFICIALS OF THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL, COUNSELLED, PROCURED, SUPPORTED AND ENCOURAGED AN UNLAWFUL STRIKE, CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT. THE EVIDENCE DISCLOSES THAT THE SEVEN APPLICANT COMPANIES ARE PARTIES TO INDIVIDUAL COLLECTIVE AGREEMENTS WITH TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (HEREINAFTER REFERRED TO AS "THE UNION") -- THAT IS, THAT EACH COMPANY HAS A SEPARATE COLLECTIVE AGREEMENT WITH THE UNION. THERE WAS ALSO EVIDENCE THAT THE COMPANIES IN QUESTION BARGAINED JOINTLY WITH THE UNION AND SIGNED A COMMON MEMORANDUM OF SETTLEMENT FROM WHICH THE INDIVIDUAL AGREEMENTS WERE PREPARED. THERE IS NOTHING IN THE EVIDENCE TO SUGGEST THAT THE TORONTO CONSTRUCTION ASSOCIATION PARTICIPATED IN THE NEGOTIATIONS OR PARTICIPATES IN THE ADMINISTRATION OF THE COLLECTIVE AGREEMENTS. IT IS CLEAR THAT THE ASSOCIATION IS NOT THE EMPLOYER OF THE EMPLOYEES CONCERNED IN THE WORK STOPPAGE WHICH IS THE SUBJECT MATTER OF THIS APPLICATION. WHILE THE SEVEN COMPANIES ARE MEMBERS OF THE ASSOCIATION AND WHILE IT MAY BE THAT UNDER ITS CONSTITUTION THE ASSOCIATION IS ENTITLED TO REPRESENT ITS MEMBERS IN ANY MATTERS PERTAINING TO THE BUILDING AND CONSTRUCTION INDUSTRY, THIS IS NOT, IN MY VIEW, SUFFICIENT TO WARRANT GRANTING CONSENT TO THE TORONTO CONSTRUCTION ASSOCIATION. ACCORDINGLY, THE APPLICATION IS DISMISSED IN SO FAR AS IT RELATES TO THE TORONTO CONSTRUCTION ASSOCIATION.

3. THE APPLICANTS SEEK LEAVE TO PROSECUTE THE RESPONDENTS FOR COUNSELLING AND PROCURING AS WELL AS SUPPORTING OR ENCOURAGING AN ILLEGAL STRIKE. THE PRINCIPLES WHICH THE BOARD FOLLOWS IN DEALING WITH APPLICATIONS FOR CONSENT TO INSTITUTE A PROSECUTION ARE REVIEWED IN THE A. L. WATSON LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1965, P. 436 AND THE CASES THEREIN REFERRED TO. THERE IS NO EVIDENCE OF ANY CONDUCT ON THE PART OF BALLENTINE PRIOR TO THE COMMENCEMENT OF THE WORK STOPPAGE. IT WAS NOT MY UNDERSTANDING OF THE APPLICANT COUNSEL'S ARGUMENT THAT HE WAS SUGGESTING THAT THE EVIDENCE CONCERNING BALLENTINE MADE OUT A CASE OF COUNSELLING OR PROCURING AFTER THE COMMENCEMENT OF THE WORK STOPPAGE. BEARING IN MIND THE PRINCIPLES ENUNCIATED IN THE A. L. WATSON LIMITED CASE, I AM UNABLE TO FIND THAT THE APPLICANTS HAVE ESTABLISHED A CASE AGAINST THE RESPONDENT BALLENTINE WITH RESPECT TO COUNSELLING AND PROCURING AN UNLAWFUL STRIKE.

4. IN SO FAR AS THE REMAINDER OF THE CASE IS CONCERNED, I AM SATISFIED THAT EACH OF THE APPLICANTS HAS DISCHARGED THE ONUS REFERRED TO IN THE A. L. WATSON LIMITED CASE. AS HAS BEEN STATED IN A NUMBER OF PREVIOUS CASES, FOR EXAMPLE, THE CANADIAN PACIFIC RAILWAY COMPANY (ROYAL YORK HOTEL) CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1961, P. 214, IT IS NOT THE POLICY OF THE BOARD TO GIVE REASONS WHEN GRANTING CONSENT TO INSTITUTE A PROSECUTION. I THEREFORE DO NOT PROPOSE TO DEAL IN ANY DETAIL WITH THE ARGUMENTS RAISED BY COUNSEL FOR THE RESPONDENTS OTHER THAN TO MAKE TWO GENERAL OBSERVATIONS. THE FIRST IS THAT I AM UNABLE TO APPRECIATE THE ARGUMENT THAT IF THE APPLICATION WAS TO BE DISMISSED WITH RESPECT TO THE TORONTO CONSTRUCTION ASSOCIATION IT SHOULD ALSO BE DISMISSED WITH RESPECT TO THE OTHER SEVEN APPLICANTS. THIS SEEMS TO ME TO BE A COMPLETE NON SEQUITUR. THE OTHER OBSERVATION HAS TO DO WITH THE ARGUMENTS RAISED CONCERNING (1) THE METHOD IN WHICH THE APPLICANTS HAVE CHOSEN TO PROCEED, THAT IS, BY WAY OF A SINGLE APPLICATION INSTEAD OF SEVEN INDIVIDUAL APPLICATIONS AND (2) WITH RESPECT TO THE MEANING OF SECTION 55 OF THE LABOUR RELATIONS ACT. ON AN APPLICATION SUCH AS THIS, I AM SATISFIED THAT THESE ARE ISSUES WHICH SHOULD BE DEALT WITH AT THE PROSECUTION STAGE.

5. HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS, CONSENT IS HEREBY GRANTED TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT THE RESPONDENT ALEX MAIN DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON OR ABOUT THE 29TH DAY OF JULY, 1969 AND THEREAFTER THE RESPONDENT

ALEX MAIN, BEING AN OFFICER AND OFFICIAL OF A COUNCIL OF TRADE UNIONS, COUNSELLED AN UNLAWFUL STRIKE;

(2) THAT THE RESPONDENT ALEX MAIN DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON OR ABOUT THE 29TH DAY OF JULY, 1969 AND THEREAFTER THE RESPONDENT ALEX MAIN, BEING AN OFFICER AND OFFICIAL OF A COUNCIL OF TRADE UNIONS, PROCURED AN UNLAWFUL STRIKE;

(3) THAT THE RESPONDENTS ALEX MAIN AND CLIVE BALLENTINE DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 28TH DAY OF AUGUST, 1969 AND THEREAFTER THE SAID RESPONDENTS, BEING OFFICERS AND OFFICIALS OF A COUNCIL OF TRADE UNIONS, SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE.

6. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER O. HODGES: NOVEMBER 5, 1969.

NO EVIDENCE WAS CALLED BY THE RESPONDENTS. FROM THE EVIDENCE ADDUCED BY THE APPLICANT COMPANIES THERE APPEARS TO BE SOMETHING THAT MIGHT BE SUBJECT TO ADJUDICATION, AND I THEREFORE CONCUR WITH THE DECISION OF THE CHAIRMAN.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: NOVEMBER 5, 1969.

I AM IN AGREEMENT WITH THE DECISION OF THE CHAIRMAN TO GRANT CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED IN PARAGRAPH 5 OF HIS JUDGMENT.

I DISSENT, HOWEVER, FROM THAT PORTION OF HIS JUDGMENT DISMISSING THE APPLICATION AGAINST THE RESPONDENT BALLENTINE WITH RESPECT TO COUNSELLING AND PROCURING AN UNLAWFUL STRIKE.

EVIDENCE WAS PRESENTED TO THE BOARD THAT IN THE PERIOD BETWEEN AUGUST 28TH, 1969 AND SEPTEMBER 9TH, 1969 THE RESPONDENT BALLENTINE WAS PRESENT AT MEETINGS OF DRIVERS OF THE APPLICANT COMPANIES WHO WERE ENGAGED IN AN UNLAWFUL STRIKE. DURING THIS PERIOD BALLENTINE, BOTH VERBALLY AND BY THE OFFERING OF MONETARY INCENTIVES, SOUGHT TO HAVE THE DRIVERS OF THE APPLICANT COMPANIES CONTINUE THEIR UNLAWFUL STRIKE. MOST DRIVERS DID, IN FACT, REMAIN AWAY FROM THEIR EMPLOYMENT.

SECTION 1(1)(i) OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:-

"STRIKE" INCLUDES A CESSATION OF WORK, A REFUSAL TO WORK OR TO CONTINUE TO WORK BY EMPLOYEES IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING, OR A SLOW-DOWN OR OTHER CONCERTED ACTIVITY ON THE PART OF EMPLOYEES DESIGNED TO RESTRICT OR LIMIT OUTPUT;
(THE UNDERLINING IS MINE)

HAVING REGARD TO THE DEFINITION OF THE WORD "STRIKE" IN THE LABOUR RELATIONS ACT, AND THE EVIDENCE PRESENTED AT THE HEARING WITH RESPECT TO THE RESPONDENT BALLENTINE, I WOULD FIND THAT THERE ARE ISSUES OF LAW AND FACT WHICH MIGHT PROPERLY BE DECIDED BY THE PROVINCIAL JUDGE IN SO FAR AS IT RELATES TO THE OFFENCES OF COUNSELLING AND PROCURING UNDER SECTION 55 OF THE LABOUR RELATIONS ACT. ACCORDINGLY, IN ADDITION TO THE GRANTING OF CONSENT ALREADY FOUND IN PARAGRAPH 5 OF THE CHAIRMAN'S DECISION, I WOULD HAVE GRANTED CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT CLIVE BALLENTINE FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT THE RESPONDENT CLIVE BALLENTINE DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON OR ABOUT THE 28TH DAY OF AUGUST, 1969 AND THEREAFTER THE RESPONDENT CLIVE BALLENTINE, BEING AN OFFICER AND OFFICIAL OF A COUNCIL OF TRADE UNIONS, COUNSELLED AN UNLAWFUL STRIKE;
- (2) THAT THE RESPONDENT CLIVE BALLENTINE DID CONTRAVENE SECTION 55 OF THE LABOUR RELATIONS ACT IN THAT COMMENCING ON OR ABOUT THE 28TH DAY OF AUGUST, 1969 AND THEREAFTER THE RESPONDENT CLIVE BALLENTINE, BEING AN OFFICER AND OFFICIAL OF A COUNCIL OF TRADE UNIONS, PROCURED AN UNLAWFUL STRIKE.

16853-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 206 (APPLICANT) v. EAST MALL I.G.A. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: CLIFFORD EVANS, HAROLD JURCHUK, RON. PARKS FOR THE APPLICANT; SIDNEY BERMACK FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 5, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR FAILURE TO BARGAIN IN GOOD FAITH AND REFUSAL TO MAKE ANY REASONABLE EFFORT TO NEGOTIATE A COLLECTIVE AGREEMENT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE IN THIS CASE ESTABLISHED THAT AFTER CONCILIATION SERVICES HAD BEEN GRANTED, THE MINISTER OF LABOUR NOTIFIED THE PARTIES ON JULY 30TH, 1969 THAT A BOARD OF CONCILIATION WOULD NOT BE APPOINTED. ON JUNE 5TH 1969, AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WAS MADE BY CERTAIN EMPLOYEES IN THE BARGAINING UNIT AND A REPRESENTATION VOTE WAS HELD ON SEPTEMBER 11TH, THE RESULT OF WHICH DEFEATED THE APPLICATION. THERE HAD BEEN A MEETING ON AUGUST 20TH BETWEEN THE UNION AND THE COMPANY BUT NO NEGOTIATIONS WERE ENTERED INTO AT THAT MEETING NOR SINCE THAT DATE TO THE DATE OF HEARING. MR. EVANS DID TELEPHONE MR. BERMACK CONCERNING AN ADJOURNMENT OF THIS MATTER, BUT THAT WAS THE ONLY CONTACT MADE BY THE UNION WITH THE COMPANY SINCE THE DATE OF THE VOTE. MR. BERMACK, ON BEHALF OF THE RESPONDENT, STATED THAT HE WAS NOW PREPARED TO NEGOTIATE WITH THE UNION. HE SAID THAT HE HAD WAITED UNTIL THE VOTE WAS TAKEN BECAUSE ANY BARGAINING DEPENDED ON ITS VERDICT, AND THOUGHT THAT THERE WAS A FURTHER 30 DAY PERIOD AFTER THAT IN WHICH ANY OBJECTIONS MIGHT BE MADE. IN ANY EVENT, NEITHER THE COMPANY NOR THE UNION TOOK ANY STEPS TO NEGOTIATE DURING THIS PERIOD.

3. IN THESE CIRCUMSTANCES, HAVING REGARD TO THE COMPLETE LACK OF ANY ATTEMPT TO BARGAIN BY EITHER OF THE PARTIES, AND THE EVIDENCE OF MR. BERMACK THAT HE WOULD NOW BARGAIN WITH THE UNION, IN OUR OPINION IT WOULD NOT BE IN THE INTERESTS OF THE PARTIES TO CONSENT TO A PROSECUTION. IN THE EXERCISE OF OUR DISCRETION IN THIS MATTER THEREFORE, WE DECLINE TO CONSENT TO THE INSTITUTION OF A PROSECUTION IN THIS MATTER.

4. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - SECTION 65

16837-69-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. AUDIO TRANSFORMER COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: R. RUSSELL AND H. DOPEL FOR THE COMPLAINANT, G. A. MACKAY, Q.C., AND J. G. HUTCHISON FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
P. J. O'KEEFFE: NOVEMBER 13, 1969.

1. THIS IS A COMPLAINT FOR RELIEF UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN IT IS ALLEGED THAT MRS. WILMA KELLER, THE AGGRIEVED PERSON WAS DISCHARGED BY THE RESPONDENT ON OCTOBER 7, 1969 CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.
2. THE EVIDENCE ESTABLISHED THAT MRS. KELLER WAS EMPLOYED BY THE RESPONDENT AS A SUPERVISOR AT THE TIME OF HER DISCHARGE. THE PARTIES AGREED THAT THE CLASSIFICATION OF SUPERVISOR WAS INCLUDED IN THE BARGAINING UNIT WHICH WAS APPROPRIATE FOR COLLECTIVE BARGAINING. APPARENTLY THE DUTIES AND RESPONSIBILITIES OF SUPERVISORS EMPLOYED BY THE RESPONDENT WERE SIMILAR TO THOSE EXERCISED BY PERSONS CLASSIFIED AS LEAD HANDS IN OTHER INDUSTRIES.
3. MRS. KELLER WAS AN ACTIVE SUPPORTER OF THE UNION. THERE WAS NO ATTEMPT TO HIDE MRS. KELLER'S ACTIVITIES IN SUPPORT OF THE UNION AS IT APPEARED THAT MRS. KELLER HAD ASSISTED IN THE UNION'S ORGANIZING CAMPAIGN AND HAD ATTENDED WITH A UNION ORGANIZER AT THE HOMES OF APPROXIMATELY FIFTEEN EMPLOYEES FOR THE PURPOSE OF ENLISTING THE EMPLOYEES AS MEMBERS.
4. ON THURSDAY, SEPTEMBER 25TH OR FRIDAY, SEPTEMBER 26TH, 1969, WILLIAM McNAMARA, THE RESPONDENT'S PLANT MANAGER, CONVENED A MEETING ON THE COMPANY'S PREMISES OF THE RESPONDENT'S SUPERVISORS AND ASSISTANT SUPERVISORS. DURING THE COURSE OF THIS MEETING, MR. McNAMARA ADVISED THE SUPERVISORS THAT THE COMPANY WISHED TO CUT DOWN ON THE OVERTIME WORKED BY THE EMPLOYEES BY HAVING THEM REPORT FOR WORK AT 8:00 A.M. RATHER THAN 7:00 A.M. AS THEY HAD DONE SINCE LAST SPRING. THE NEW HOURS WERE TO BE IMPLEMENTED PIECEMEAL. MRS. KELLER'S DEPARTMENT COMMENCED WORKING THE NEW HOURS OF 8:00 A.M. TO 5:00 P.M. ON MONDAY, OCTOBER 6TH.
5. DURING THIS PERIOD, TWO OF MRS. KELLER'S DAUGHTERS ALSO WORKED AT THE RESPONDENT'S PREMISES. ON OR ABOUT FRIDAY, SEPTEMBER 26TH, 1969, MR. McNAMARA APPROACHED MRS. KELLER AND EXPRESSED HIS DISAPPOINTMENT OVER THE FACT THAT ONE OF MRS. KELLER'S DAUGHTERS WAS KNOWN TO BE SUPPORTING THE UNION. MRS. KELLER TESTIFIED THAT MR. McNAMARA INDICATED TO HER THAT THE PRESIDENT OF THE RESPONDENT WOULD BE VERY UNHAPPY IF THE UNION ORGANIZED THE RESPONDENT'S EMPLOYEES AND WOULD CLOSE THE RESPONDENT'S PREMISES IF THIS SITUATION AROSE. MR. McNAMARA, HOWEVER, DENIED MAKING SUCH A STATEMENT TO MRS. KELLER.

6. ON OCTOBER 2, 1969, MR. MCNAMARA CAUSED A NOTICE TO BE POSTED ON THE COMPANY'S BULLETIN BOARDS WHICH READS AS FOLLOWS:

AUDIO TRANSFORMER COMPANY LIMITED
202 REGINA ST. NORTH
WATERLOO
ONTARIO

OCTOBER 2, 1969.

NOTICE

EMPLOYEES ARE NOT PERMITTED TO ENGAGE IN UNION ACTIVITIES ON COMPANY PREMISES. ANY EMPLOYEE WHO DOES SO WILL BE SUBJECT TO IMMEDIATE DISMISSAL.

PLANT MANAGER
"W. MCNAMARA"

7. ON OCTOBER 3RD, THE UNION MADE APPLICATION FOR CERTIFICATION OF THE RESPONDENT'S EMPLOYEES. ON TUESDAY, OCTOBER 7TH, REPRESENTATIVES OF THE UNION APPEARED IN FRONT OF THE RESPONDENT'S PREMISES AND DISTRIBUTED LEAFLETS ADVISING THE EMPLOYEES THAT APPLICATION HAD BEEN MADE. MRS. KELLER TESTIFIED THAT ON ENTERING THE PLANT SHE WAS GIVEN ONE OF THE LEAFLETS AND SECURED SEVERAL ADDITIONAL LEAFLETS FOR EMPLOYEES WHO MAY HAVE ENTERED THE PLANT BEFORE THE UNION REPRESENTATIVES CAME ON THE SCENE. AFTER ENTERING THE PLANT ON OCTOBER 7TH, MRS. KELLER DISTRIBUTED TWO OF THE LEAFLETS TO OTHER EMPLOYEES WHO HAD NOT RECEIVED A COPY. MRS. KELLER PUNCHED IN AT 7:34 A.M. ON THAT DAY. AT APPROXIMATELY 7:40 A.M. MRS. KELLER LEFT THE RESPONDENT'S PREMISES MONENTARILY IN ORDER TO SPEAK TO THE UNION REPRESENTATIVES WHO WERE DISTRIBUTING THE LEAFLETS. WHILE MRS. KELLER WAS SPEAKING TO THE UNION REPRESENTATIVES OUTSIDE THE PLANT, MR. HELMOND, HER FOREMAN, ENTERED THE PLANT AND APPARENTLY SAW MRS. KELLER SPEAKING TO THE UNION REPRESENTATIVES. MRS. KELLER RE-ENTERED THE PLANT AND AT APPROXIMATELY 7:54 A.M. ONE OF THE EMPLOYEES APPROACHED MRS. KELLER AND HANDED A COPY OF THE LEAFLET TO MRS. KELLER AND SUGGESTED TO MRS. KELLER WHAT SHE COULD DO WITH THE LEAFLET. MRS. KELLER STATED THAT SHE THANKED THE EMPLOYEE FOR THE LEAFLET, FOLDED THE LEAFLET AND PUT IT IN HER PURSE TOGETHER WITH OTHER LEAFLETS THAT SHE HAD IN HER POSSESSION. MRS. KELLER THEN COMMENCED LOOKING FOR HER ASSISTANT AND BEGAN ORGANIZING HER WORK FOR THE DAY. THIS ALL OCCURRED PRIOR TO THE 7:57 A.M. WARNING BELL WHICH SOUNDED PRIOR TO THE 8:00 A.M. STARTING BELL.

8. MRS. KELLER TESTIFIED THAT SHE CARRIED ON WITH HER WORK FROM 8:00 A.M. TO APPROXIMATELY 11:15 A.M. WHEN SHE WAS SUMMONED TO THE OFFICE OF MR. McNAMARA. MRS. KELLER ATTENDED AT MR. McNAMARA'S OFFICE ACCOMPANIED BY MR. HELMOND. MR. McNAMARA ASKED MRS. KELLER WHETHER SHE HAD HANDED OUT UNION PAPERS. MRS. KELLER REPLIED THAT SHE HAD. MR. McNAMARA ASKED HER WHETHER SHE HAD SEEN THE NOTICE THAT HAD BEEN POSTED ON THE COMPANY BULLETIN BOARD. AGAIN MRS. KELLER AGREED THAT SHE HAD. WHEN ASKED WHETHER SHE UNDERSTOOD THE NOTICE SHE SAID THAT IT WAS A PROHIBITION AGAINST ENGAGING IN UNION ACTIVITY DURING WORKING HOURS. MR. McNAMARA ASKED MR. HELMOND TO SECURE A COPY OF THE NOTICE. MR. HELMOND BROUGHT A COPY OF THE NOTICE TO THE OFFICE AND MR. HELMOND READ THE NOTICE WHICH CLEARLY PROHIBITED UNION ACTIVITIES "ON COMPANY PREMISES". MR. McNAMARA THEN ADVISED MRS. KELLER THAT HE HAD NO ALTERNATIVE BUT TO DISCHARGE MRS. KELLER BECAUSE SHE HAD NOT COMPLIED WITH COMPANY RULES. MR. McNAMARA THEN TOLD MRS. KELLER TO ATTEND AT THE COMPANY'S GENERAL OFFICES AND OBTAIN HER PAY. MRS. KELLER, AGAIN ACCOMPANIED BY MR. HELMOND, WENT TO THE GENERAL OFFICES WHERE SHE WAS GIVEN HER PAY WHICH INCLUDED HER HOLIDAY PAY. SINCE MRS. KELLER RECEIVED PAY FOR A TOTAL OF TWELVE HOURS FOR HER WORK ON OCTOBER 6TH AND OCTOBER 7TH, SHE CONCLUDED THAT SINCE SHE HAD WORKED EIGHT HOURS ON OCTOBER 6TH SHE HAD THEREFORE BEEN PAID UP UNTIL NOON HOUR ON OCTOBER 7TH. APART FROM A BRIEF DELAY WHILE SOMEONE SIGNED HER CHEQUE, MRS. KELLER DID NOT HAVE TO WAIT UNTIL THE CHEQUE WAS PREPARED. APPARENTLY THE PAYROLL DEPARTMENT HAD BEEN INSTRUCTED EARLIER TO COMPUTE HER FINAL PAY CHEQUE.

9. IN CROSS-EXAMINATION, MRS. KELLER IDENTIFIED A CHEQUE DATED OCTOBER 7, 1969 AS THE CHEQUE SHE RECEIVED AT THE TIME OF HER DISCHARGE. THIS CHEQUE BORE THE SIGNATURE OF J. G. HUTCHISON, THE COMPANY PRESIDENT. MRS. KELLER STATED THAT MR. HUTCHISON HAD NOT SIGNED THE CHEQUE WHEN SHE RECEIVED IT. THIS FACT WAS CONFIRMED BY MR. HUTCHISON WHEN HE TESTIFIED THAT HE HAD AN ARRANGEMENT WITH THE BANK THAT WHEN HE WAS ABSENT FROM WORK AND WAS UNABLE TO SIGN THE CHEQUE THE BANK WOULD CASH THE CHEQUE WHICH HAD BEEN SIGNED BY ONLY ONE OF THE COMPANY'S SIGNING OFFICERS AND HE WOULD ATTEND AT THE OFFICES OF THE BANK AND ADD HIS SIGNATURE TO THE CHEQUE AT THE BANK'S REQUEST.

10. MR. McNAMARA TESTIFIED THAT AT THE MEETING WHICH HE IDENTIFIED AS TAKING PLACE ON SEPTEMBER 25TH, FOUR ITEMS WERE DISCUSSED. IT WAS AGREED THAT WHILE SUPERVISORS WOULD CONTINUE TO PUNCH IN, THEY WOULD NOT BE REQUIRED TO PUNCH OUT UNLESS THEY LEFT THE PLANT BEFORE THE REGULAR 5:00 P.M. QUITTING TIME. ANOTHER OF THE ITEMS ON THE AGENDA CONCERNED THE REDUCTION OF OVERTIME HOURS WORKED BY THE EMPLOYEES. WHEN THE SUPERVISORS ASKED MR. McNAMARA WHEN THEY WOULD HAVE TIME TO DO THEIR PAPER WORK, HE TESTIFIED THAT HE INFORMED THEM THAT IF THEY WISHED THEY COULD REPORT FOR WORK EARLY AND THEY WOULD BE PAID FOR THE OVERTIME WORKED BY THEM. MR. McNAMARA ALSO TESTIFIED THAT MRS.

KELLER HAD PREVIOUSLY PERFORMED HER PAPER WORK AFTER THE 5:00 P.M. QUITTING TIME ON MANY OCCASIONS. SOMETIMES SHE WOULD WORK AS LATE AS SIX O'CLOCK IN THE EVENING DOING HER PAPER WORK. MRS. KELLER RECEIVED NO OVERTIME PAY FOR THESE EXTRA HOURS. MR. McNAMARA TESTIFIED THAT MRS. KELLER "WAS THE WORST OFFENDER" IN THIS REGARD. WHEN ASKED WHETHER HE CONSIDERED WORKING OVERTIME WITHOUT PAY AN "OFFENCE" MR. McNAMARA STATED THAT HE DID AND THAT IT WAS NOT FAIR TO THE HUSBAND AND FAMILY OF A WORKER IF SHE STAYED AFTER HOURS TO PERFORM WORK.

11. THE RESPONDENT PRODUCED MRS. KELLER'S TIME CARD FOR THE LAST WEEK SHE WORKED. THE TIME CARD INDICATES THAT ON MONDAY, OCTOBER 6TH SHE REPORTED TO WORK AT 7:41 A.M. SINCE MRS. KELLER WORKED UNTIL 5:00 P.M. THAT DAY SHE WAS GIVEN CREDIT ON THE TIME CARD FOR 8.3 HOURS WORK. ON TUESDAY, OCTOBER 7TH SHE PUNCHED IN AT 7:34 A.M. THE TIME OFFICE RECORDED THE TIME THAT SHE LAST WORKED AS BEING 11:00 A.M. MRS. KELLER WAS GIVEN CREDIT ON HER TIME CARD FOR 3.7 HOURS FOR TUESDAY'S WORK. THE TOTAL CREDIT FOR THE WEEK IN QUESTION WAS TWELVE HOURS. WHEN IT WAS BROUGHT TO THE ATTENTION OF MR. McNAMARA THAT THE TIME LAPSE BETWEEN 7:34 A.M. AND 11:00 A.M. SHOULD BE 3.4 HOURS RATHER THAN 3.7 HOURS, MR. McNAMARA SUGGESTED THAT THE PAYROLL DEPARTMENT ADDED THE ADDITIONAL .3 HOURS IN ORDER TO ROUND OFF THE TIME TO AN EVEN TWELVE HOURS.

12. MR. McNAMARA TESTIFIED THAT MRS. KELLER'S EMPLOYMENT WAS TERMINATED BECAUSE HE HAD BEEN INFORMED BY THE FOREMAN THAT SHE HAD DISTRIBUTED UNION LEAFLETS ON COMPANY PREMISES DURING HER WORKING HOURS. MR. McNAMARA ACKNOWLEDGED THAT AT THE TIME OF DISCHARGING MRS. KELLER, HE DID NOT TAKE THE POSITION THAT SHE HAD DISTRIBUTED THE LEAFLETS DURING HER WORKING HOURS. THE REASON GIVEN AT THE TIME OF DISCHARGE WAS THAT SHE HAD BROKEN THE PLANT RULE BY DISTRIBUTING THE LEAFLETS ON COMPANY PREMISES. HOWEVER, MR. McNAMARA TESTIFIED THAT SINCE SHE WAS BEING PAID FROM THE TIME SHE HAD PUNCHED IN, THE HOURS SHE WAS ON THE PREMISES WERE HER WORKING HOURS, IN ACCORDANCE WITH THE ARRANGEMENT MADE WITH THE SUPERVISORS AT THE SEPTEMBER 25TH MEETING.

13. MR. McNAMARA, DURING CROSS-EXAMINATION, ACKNOWLEDGED THAT MRS. KELLER WAS A GOOD AND CONSCIENTIOUS WORKER WHO HAD BEEN WITH THE COMPANY, WITH BROKEN SERVICE, SINCE 1962.

14. MR. McNAMARA TESTIFIED THAT PRIOR TO DISCHARGING MRS. KELLER HE DISCUSSED THE MATTER WITH MR. HUTCHISON WHO CONFIRMED MR. McNAMARA'S DECISION TO EFFECT THE DISCHARGE. MR. McNAMARA TESTIFIED THAT IT WAS HIS PRACTICE TO REGULARLY CONSULT WITH MR. HUTCHISON.

15. MR. HUTCHISON TESTIFIED THAT MR. McNAMARA KEPT HIM INFORMED OF EVERYTHING THAT WENT ON IN THE PLANT AND HAD INFORMED HIM ON OCTOBER 7TH BETWEEN 10:30 A.M. AND 11:00 A.M. OF MR. McNAMARA'S INTENTION TO DISCHARGE MRS. KELLER.

16. MR. HUTCHISON, HOWEVER, TESTIFIED THAT HE HAD NO PRIOR KNOWLEDGE OF THE ARRANGEMENTS MADE BY MR. McNAMARA CONCERNING THE PAYMENT OF OVERTIME TO SUPERVISORS FROM THE TIME THEY PUNCHED IN IN THE MORNING.

17. ANOTHER EMPLOYEE, MRS. AYERS, WHO IS CLASSIFIED AS A SUPERVISOR AND WHO HAD ATTENDED THE SEPTEMBER MEETING CONFIRMED MR. McNAMARA'S TESTIMONY WITH RESPECT TO MR. McNAMARA'S AGREEMENT TO PAY SUPERVISORS FROM THE TIME THEY PUNCHED IN IN THE MORNING. IT IS NOTED, HOWEVER, THAT MRS. AYERS HAD BEEN ACTIVE IN OPPOSING THE UNION'S APPLICATION FOR CERTIFICATION AND HAD BEEN A SPOKESMAN FOR THE OBJECTORS AT THE CERTIFICATION HEARING.

18. MRS. KELLER TESTIFIED IN REPLY THAT IT WAS A PLANT RULE THAT THE FOREMAN MUST INITIAL THE TIME CARDS IN ORDER THAT EMPLOYEES BE PAID FOR ANY OVERTIME WORKED. WHEN SHE WORKED OVERTIME FROM 7:00 A.M. TO 8:00 A.M. DURING THE WEEK IMMEDIATELY FOLLOWING THE MEETING WHEN THE ALLEGED CHANGE IN OVERTIME PROCEDURE WAS MADE, THE FOREMAN CONTINUED TO INITIAL HER TIME CARD TO SUBSTANTIATE THE FACT SHE HAD WORKED OVERTIME. MRS. KELLER DENIED THAT SHE HAD WORKED OVERTIME ON OCTOBER 6TH OR OCTOBER 7TH AND HER TIME CARD FOR THOSE DATES DOES NOT CONTAIN THE INITIALS OF HER FOREMAN TO INDICATE THAT OVERTIME WAS WORKED.

19. WHILE THERE IS SUBSTANTIAL AGREEMENT ON THE FACTS OF THIS CASE, THE MAIN AND MOST CRUCIAL ITEM WHICH IS IN DISPUTE IS THE QUESTION AS TO WHETHER OR NOT MRS. KELLER HAD DISTRIBUTED THE LEAFLETS DURING HER WORKING HOURS WHEN THE DISTRIBUTION HAD BEEN MADE BY HER AFTER SHE HAD PUNCHED IN BUT BEFORE THE COMMENCEMENT OF THE SHIFT AT 8:00 A.M. IT IS CLEAR THAT THE DISTRIBUTION HAD BEEN MADE PRIOR TO 7:55 A.M. AND THAT THE SHIFT FOR MRS. KELLER'S DEPARTMENT COMMENCED AT 8:00 A.M. MR. McNAMARA TOOK THE POSITION THAT SUPERVISORS WERE PAID FOR PAPER WORK FROM THE TIME THEY PUNCHED IN AND FOR THAT REASON MRS. KELLER WAS GIVEN CREDIT FOR THREE-TENTHS OF AN HOUR ON THE MONDAY WHEN SHE PUNCHED IN AT 7:41 A.M. AND FOR SEVEN-TENTHS OF AN HOUR WHEN SHE PUNCHED IN AT 7:34 A.M.

20. THE ISSUE OF CREDIBILITY MUST BE DETERMINED IN THIS CASE. HAVING REGARD FOR HER Demeanour IN THE WITNESS BOX AND THE MANNER IN WHICH SHE TESTIFIED WE HAVE NO HESITATION IN FINDING THAT MRS. KELLER WAS A MOST TRUTHFUL AND FORTHRIGHT

WITNESS. IN ADDITION, WHEN MRS. KELLER WAS QUESTIONED BY MR. McNAMARA IMMEDIATELY PRIOR TO HER DISCHARGE, SHE AGAIN WAS VERY TRUTHFUL AND FORTHRIGHT. IN ARGUMENT, COUNSEL FOR THE RESPONDENT STATED THAT HE WAS PREPARED TO CONCEDE THAT MRS. KELLER DID NOT REALIZE SHE WAS BEING PAID FOR THE PERIOD PRIOR TO 8:00 A.M. ON OCTOBER 6TH OR OCTOBER 7TH.

21. A SERIOUS QUESTION ARISES, HOWEVER, WITH RESPECT TO THE CREDIBILITY OF THE TESTIMONY OF MR. McNAMARA. MR. McNAMARA TESTIFIED BEFORE THE BOARD IN A VERY PRECISE AND DEFINITE MANNER. IF, HOWEVER, THERE HAD BEEN SOME PRIOR ARRANGEMENT TO PAY SUPERVISORS FROM THE TIME THEY PUNCHED IN, THE FACT THAT MR. McNAMARA DID NOT BRING THIS MATTER TO THE ATTENTION OF MRS. KELLER AT THE TIME OF HER DISCHARGE IS INCONSISTENT WITH HIS PRECISE AND DEFINITE APPROACH. NEEDLESS TO SAY, IT WOULD OBVIOUSLY BE A VERY LOOSE PRACTICE TO PERMIT SUPERVISORS TO CLAIM OVERTIME PAY FROM THE TIME THEY PUNCHED IN WHEN THERE WAS NO CONTROL OVER THE WORK THEY PERFORMED AND NO ONE WOULD BE AVAILABLE TO ASCERTAIN WHETHER OR NOT THEY WERE ACTIVELY ENGAGED IN PERFORMING THEIR PAPER WORK PRIOR TO THE COMMENCEMENT OF THE 8:00 A.M. SHIFT. AGAIN, IT APPEARS FROM THE TESTIMONY THAT ALTHOUGH MR. McNAMARA HAD A PRACTICE OF CONSULTING WITH MR. HUTCHISON, MR. HUTCHISON WAS NOT INFORMED OF THE NEW ARRANGEMENTS TO PAY SUPERVISORS FROM THE TIME THEY PUNCHED IN. THE VERY LOOSENESS OF THIS ALLEGED PROCEDURE IS AGAIN INCONSISTENT WITH THE PRECISE MANNER IN WHICH MR. McNAMARA TESTIFIED AS TO HIS CONDUCT WHEN MRS. KELLER INITIALLY TOOK THE POSITION AT THE TIME OF HER DISCHARGE THAT THE NOTICE ONLY PROHIBITED HER FROM ENGAGING IN UNION ACTIVITY DURING WORKING HOURS, THE MOST OBVIOUS REPLY TO SUCH ASSERTIONS, AND THE ONE MOST CONSISTENT WITH MR. McNAMARA'S TESTIMONY AT THE HEARING, WOULD HAVE BEEN THAT SHE HAD DISTRIBUTED THE LEAFLETS DURING HER WORKING HOURS SINCE THE COMPANY HAD PREVIOUSLY AGREED TO PAY HER FROM THE TIME SHE PUNCHED IN. HOWEVER, THIS IS NOT THE REPLY MR. McNAMARA MADE. INSTEAD, MR. McNAMARA CAUSED A COPY OF THE NOTICE TO BE BROUGHT INTO HIS OFFICE AND HE READ THE NOTICE TO MRS. KELLER IN ORDER TO MAKE IT CLEAR TO HER THAT THE NOTICE PROHIBITED UNION ACTIVITY ON THE COMPANY PREMISES. THERE WAS NO REFERENCE IN THE NOTICE TO "WORKING HOURS".

22. IT IS ALSO TO BE NOTED THAT THE PAY OFFICE HAD BEEN INFORMED OF MRS. KELLER'S IMPENDING DISMISSAL AT APPROXIMATELY 11:00 A.M., AS EVIDENCED BY THE NOTATION ON HER TIME CARD. MR. McNAMARA ACKNOWLEDGED THAT SINCE MRS. KELLER'S TERMINATION PAY WAS READY FOR HER WHEN SHE LEFT HIS OFFICE, HE MUST HAVE GIVEN THE INSTRUCTIONS TO HAVE HER PAY PREPARED BEFORE HE CALLED HER INTO HIS OFFICE TO DISCHARGE HER. THIS FACT IS

CONSISTENT WITH MRS. KELLER'S TESTIMONY THAT SHE WAS SUMMONED TO MR. McNAMARA'S OFFICE AT 11:15 A.M. IT IS NOT WITHOUT INTEREST TO NOTE THAT MRS. KELLER TESTIFIED THAT SHE WENT TO MR. McNAMARA'S OFFICE AT 11:15 A.M. BEFORE HER TIME CARD WAS FILED AS AN EXHIBIT AND BEFORE SHE BECAME AWARE OF THE SIGNIFICANCE OF THE NOTATIONS ON HER TIME CARD. IT IS READILY APPARENT THAT UNLESS MRS. KELLER WAS PAID UP TO THE NOON HOUR ON OCTOBER 7TH SHE DID NOT RECEIVE CREDIT FOR ANY TIME WORKED BY HER AFTER 11:00 A.M.

23. IN ADDITION, MR. McNAMARA'S CRITICISM OF MRS. KELLER AS BEING "THE WORST OFFENDER" BECAUSE SHE HAD REGULARLY WORKED OVERTIME AFTER THE END OF HER SHIFT, WITHOUT PAY, IS ALSO INCONSISTENT WITH HIS GENERAL ATTITUDE TOWARDS MRS. KELLER.

24. THE COMPLAINANT ALSO ARGUED THAT THE EVIDENCE THAT MR. McNAMARA HAD DISCUSSED THE IMPENDING DISCHARGE WITH MR. HUTCHISON AFTER 10:30 A.M. ON OCTOBER 7TH WAS ALSO CAST IN DOUBT SINCE MR. HUTCHISON WAS NOT AVAILABLE TO SIGN HER FINAL PAY CHEQUE SHORTLY AFTER 11:00 A.M. WHILE THIS LATTER FACT MAY CREATE A SUSPICION, THERE, OF COURSE, COULD BE MANY REASONABLE EXPLANATIONS AS TO THE UNAVAILABILITY OF MR. HUTCHISON.

25. AFTER WEIGHING ALL THE EVIDENCE AND THE INCONSISTENCIES NOTED ABOVE, WE FIND THAT THE EVIDENCE OF MRS. KELLER, WHERE IT IS IN CONFLICT WITH THE TESTIMONY OF MR. McNAMARA AND MRS. AYERS, IS TO BE PREFERRED. WE FIND ON ALL THE EVIDENCE THAT MR. McNAMARA'S SELF-RIGHTEOUS ATTEMPT TO PORTRAY HIMSELF AS BEING EXTREMELY CONCERNED ABOUT THE WELFARE OF MRS. KELLER AS IT MIGHT HAVE BEEN AFFECTED BY HER WORKING OVERTIME, WHEN SHE WAS NOT BEING PAID, IS INCONSISTENT WITH HIS INSISTENCE THAT SHE STRICTLY ADHERE TO THE PLANT RULE AS POSTED. WE ALSO FIND THAT THERE WAS NO PRIOR ARRANGEMENT TO PAY MRS. KELLER FROM THE TIME SHE PUNCHED IN. HER SHIFT STARTED AT 8:00 A.M. AND WHEN SHE WAS AT WORK HER PAY COMMENCED AT THAT TIME. HER TESTIMONY IN THIS REGARD IS SUPPORTED BY ALL THE OBJECTIVE EVIDENCE. WE ARE OF OPINION THAT THE NOTATIONS ON HER TIME CARD WERE MADE IN AN EFFORT TO SUBSTANTIATE THE POSITION ADOPTED BY THE RESPONDENT THAT MRS. KELLER HAD ENGAGED IN UNION ACTIVITY DURING HER WORKING HOURS.

26. THE ONLY REASONABLE CONCLUSION THAT CAN BE REACHED ON THE EVIDENCE OF THIS CASE IS THAT MRS. KELLER WAS DISCHARGED FOR UNION ACTIVITY. THERE WAS NO EVIDENCE THAT THE ACTIVITIES OF MRS. KELLER INTERFERED WITH THE QUALITY OR QUANTITY OF PRODUCTION, THE RIGHTS OF OTHER EMPLOYEES, THE RESPONDENT'S CUSTOMERS OR ANY OTHER MATTER WHICH WOULD BE A VALID CONCERN OF THE RESPONDENT COMPANY AND OVER WHICH IT WOULD HAVE THE RIGHT TO EXERCISE CONTROL.

27. SECTIONS 3 AND 53 OF THE LABOUR RELATIONS ACT READ AS FOLLOWS:

3. EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES.

53. NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION.

28. SECTION 53 OF THE ACT SHOULD BE USED BY AN EMPLOYER AS A SHIELD AND NOT AS A SWORD. ITS PURPOSE IS TO AFFORD AN EMPLOYER AN ANSWER TO THE CHARGE THAT HE HAS INTERFERED WITH A PERSON'S RIGHTS UNDER SECTION 3 OF THE ACT BY PREVENTING THAT PERSON FROM ATTEMPTING AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE ANOTHER EMPLOYEE DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION. HOWEVER, SECTION 53 ONLY AFFORDS THE EMPLOYER AN ANSWER TO SUCH CHARGE WHEN THE ALLEGED ACTIVITY TAKES PLACE DURING WORKING HOURS. THE APPLICATION OF SECTION 53 WAS DEALT WITH BY THE BOARD IN A UNANIMOUS DECISION IN McNAIR PRODUCTS COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 514.

29. SINCE WE HAVE FOUND THAT THE ACTIVITIES OF MRS. KELLER OF WHICH THE RESPONDENT COMPLAINS, ALTHOUGH CARRIED OUT ON COMPANY PREMISES, WERE NOT CARRIED OUT DURING WORKING HOURS, SECTION 53 DOES NOT AFFORD THE RESPONDENT ANY PROTECTION TO THE CHARGE THAT HE DISCHARGED MRS. KELLER FOR EXERCISING A RIGHT UNDER THE ACT CONTRARY TO SECTION 50 OF THE ACT.

30. IF A PERSON HAS CERTAIN RIGHTS UNDER SECTION 3 OF THE ACT, THESE RIGHTS CANNOT BE UNREASONABLY RESTRICTED BY AN EMPLOYER. THE FACT THAT THE RESPONDENT HAS GIVEN PRIOR NOTICE IN WRITING OF ITS INTENTION TO DO SO DOES NOT ENHANCE THE RESPONDENT'S POSITION NOR DOES SUCH PRIOR NOTICE GIVE IT THE RIGHT TO CONTRAVENE SECTION 3 OF THE ACT.

31. FOR THE PURPOSES OF LABOUR RELATIONS AN EMPLOYER'S RIGHT TO MAKE RULES AS TO CONDUCT ON THE EMPLOYER'S PREMISES IS RESTRICTED ONLY BY THE TERMS OF THE LABOUR RELATIONS ACT OR THE TERMS OF A SUBSISTING COLLECTIVE AGREEMENT. A PERSON'S FREEDOMS WHICH ARE CREATED BY SECTION 3 OF THE ACT MUST, OF COURSE, BE CONSIDERED IN THE LIGHT OF THE RIGHTS OF OTHERS. SECTION 3 DOES NOT CREATE AN ABSOLUTE FREEDOM TO ENGAGE IN UNION ACTIVITIES AT ANY TIME OR PLACE.

IF IT HAD BEEN ESTABLISHED THAT MRS. KELLER WAS MATERIALLY INTERFERING WITH PLANT SAFETY OR WAS DESTROYING COMPANY PROPERTY OR WAS CREATING A SERIOUS DISTURBANCE OR OBSTRUCTION WHILE ENGAGING IN UNION ACTIVITY ON COMPANY PREMISES BEFORE THE COMMENCEMENT OF HER SHIFT, THE COMPANY WOULD HAVE THE RIGHT TO PREVENT SUCH INTERFERENCE, DISTURBANCE, OBSTRUCTION OR DESTRUCTION. IF, BY TAKING REASONABLE STEPS TO PREVENT SUCH UNWARRANTED ACTIVITY, THE COMPANY HAD INCIDENTALLY STOPPED HER UNION ACTIVITY, THE COMPANY COULD NOT BE SAID TO BE CONTRAVENING THE ACT.

32. IN BALANCING THE RIGHTS OF A COMPANY TO CONTROL ACTIVITIES ON ITS PROPERTY WITH THE RIGHTS OF PERSONS CREATED BY SECTION 3 OF THE ACT, THE BOARD MUST ASCERTAIN THE REAL AND MOTIVATING REASON FOR THE ACTION TAKEN BY THE EMPLOYER. IF THE REAL AND MOTIVATING REASON IS TO THWART THE UNION OR ITS MEMBERS, THE EMPLOYER MAY BE SAID TO HAVE CONTRAVENED THE ACT.

33. IN THE BARBARA JARVIS AND ASSOCIATION MEDICAL SERVICES INCORPORATED CASE, CCH CANADIAN LABOUR LAW CASES, 1960-1964, ¶16,218, AT PAGE 980, THE BOARD STATED AS FOLLOWS:

HAVING REGARD TO THE PROVISIONS OF THE ACT READ AS A WHOLE, I AM OF OPINION THAT ORGANIZATION OF A TRADE UNION AND COLLECTIVE BARGAINING ARE TWO OF THE ACTIVITIES WHICH ARE CONTEMPLATED AS COMING WITHIN THE SCOPE OF SECTION 3 AND THAT FREEDOM TO PARTICIPATE IN THESE ACTIVITIES IS AMONG THE "RIGHTS" DEALT WITH BY SECTION 50 OF THE ACT. THE LAST-MENTIONED SECTION FORBIDS AN EMPLOYER TO "REFUSE ... TO CONTINUE TO EMPLOY A PERSON ... BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER [THE] ACT". AN EMPLOYER WHO DISCHARGES A PERSON FOR INFRACTION OF A "PLANT RULE" WHICH FORBIDS AN EMPLOYEE TO EXERCISE HIS RIGHTS UNDER THE ACT IS THEREFORE ACTING IN VIOLATION OF SECTION 50 OF THE ACT. THIS CONCLUSION DOES NOT MEAN THAT AN EMPLOYER HAS BEEN DEPRIVED BY THE LEGISLATION OF AUTHORITY TO MAINTAIN ORDER ON HIS PREMISES AND TO ENSURE THAT PRODUCTIVITY WILL NOT SUFFER. IF THE PRIMARY AND BONA FIDE PURPOSE OF ANY RULE HE ESTABLISHES WITH REGARD TO ACTIVITY ON HIS PREMISES OUTSIDE OF WORKING HOURS OR OF A KIND NOT COVERED BY SECTION 53 IS IN FURTHERANCE OF THE OBJECTIVES JUST MENTIONED OR LIKE OBJECTIVES, NO EXCEPTION CAN BE TAKEN TO THE RULE, EVEN THOUGH AN INCIDENTAL EFFECT OF THE RULE MAY BE TO CURTAIL THE OPPORTUNITY A PERSON IN HIS EMPLOY HAS TO EXERCISE HIS RIGHTS UNDER THE ACT.

34. SECTION 53, THEREFORE, IS INTENDED TO PROVIDE THE EMPLOYER WITH "AUTHORITY TO MAINTAIN ORDER ON HIS PREMISES AND TO ENSURE THAT PRODUCTION WILL NOT SUFFER". THERE IS NO SUGGESTION THAT ANYTHING DONE BY MRS. KELLER ON THE DAY OF HER DISCHARGE IN ANY WAY DISTURBED THE ORDER OF THE RESPONDENT'S PREMISES OR INTERFERED WITH PRODUCTION. IF THERE HAD BEEN SUCH EVIDENCE THEN IT WOULD TEND TO SUPPORT THE BONA FIDE PURPOSE OF THE EMPLOYER'S ACTIONS.

35. FOR THE REASONS SET OUT ABOVE, THE EVIDENCE IN THE INSTANT CASE HAS ESTABLISHED THAT THE REAL AND MOTIVATING REASON FOR THE DISCHARGE OF MRS. KELLER WAS BECAUSE SHE ENGAGED IN UNION ACTIVITY ON THE RESPONDENT'S PREMISES OUTSIDE HER WORKING HOURS. THE BOARD THEREFORE FINDS THAT MRS. KELLER WAS DISCHARGED BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE ACT.

36. THE BOARD THEREFORE DETERMINES:

- (A) THAT MRS. WILMA KELLER SHALL BE REINSTATED FORTHWITH IN THE POSITION HELD BY HER AT THE TIME OF HER DISCHARGE;
- (B) THAT THE RESPONDENT PAY TO MRS. KELLER THE SUM OF \$251.60 AS COMPENSATION FOR THE LOSS OF EARNINGS SUSTAINED BY HER BETWEEN THE DATE OF HER DISCHARGE AND OCTOBER 31, 1969, THE DATE OF THE HEARING IN THIS MATTER;
- (C) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS MRS. KELLER SUSTAINED BY REASON OF HER HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF THE HEARING AND THE DATE OF HER REIN-STATEMENT; AND
- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (C) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO MRS. KELLER.

1. HAVING REGARD FOR THE EVIDENCE ADDUCED AT THE HEARING, THE REPRESENTATIONS OF THE PARTIES AND THE BOARD'S POLICY IN RESPECT OF COMPLAINTS MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, I CONCUR IN THE DECISION OF THE BOARD THAT MRS. WILMA KELLER, THE AGGRIEVED PERSON BE REINSTATED IN HER EMPLOYMENT BY THE RESPONDENT COMPANY AND BE PAID THE AMOUNT OF COMPENSATION AS SPECIFIED THEREIN.

2. I REGRET, HOWEVER, THAT I MUST DISASSOCIATE MYSELF COMPLETELY FROM THE CRITICAL REMARKS CONTAINED IN THE DECISION CONCERNING MR. W. McNAMARA, PLANT MANAGER OF THE RESPONDENT. I CONSIDER SOME OF THE LANGUAGE USED TO BE COMPLETELY UNWARRANTED AND UNNECESSARY FOR THE PURPOSES OF THE DECISION. IT WILL NEITHER PROMOTE AN AMICABLE EMPLOYER-EMPLOYEE RELATIONSHIP NOR CREATE A HEALTHY CLIMATE IN WHICH TO CONDUCT COLLECTIVE BARGAINING.

INDEXED ENDORSEMENT - SECTION 47A

16548-69-M: RETAIL CLERKS UNION LOCALS No. 206 AND 486 CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANTS) V. SUPER CITY DISCOUNT FOODS LIMITED; LOBLAW GROCETERIAS CO. LIMITED UNION OF CANADIAN RETAIL EMPLOYEES (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: IAN SCOTT AND THOMAS REES FOR THE APPLICANTS; W. GIBSON GRAY, Q.C., G. H. METCALFE AND F. D. KEAN FOR THE CORPORATE RESPONDENTS, MARTIN LEVINSON AND A. HART FOR UNION OF CANADIAN RETAIL EMPLOYEES.

DECISION OF THE BOARD: NOVEMBER 24, 1969.

. . .

2. THIS IS AN APPLICATION UNDER SECTION 47A OF THE ACT. IN AN EARLIER CASE INVOLVING THE SAME PARTIES (BOARD FILE 16268-69-M) THE APPLICANT MADE AN EARLIER APPLICATION IN WHICH THE BOARD BY ITS DECISION DATED AUGUST 1, 1969 DISMISSED THAT APPLICATION FOR THE REASONS THEREIN STATED (SEE O.L.R.B. MONTHLY REPORT, AUGUST 1969, P. 666).

3. THE APPLICANT REAPPLIED IN THE INSTANT CASE BY ITS LETTER OF APPLICATION DATED AUGUST 8, 1969, AND ITS LETTER READS IN PART AS FOLLOWS:

WE HAVE CONSIDERED THE BOARD'S DECISION IN FILE NO. 16268-69-M IN WHICH IT IS HELD SUBSTANTIALLY THAT THE APPLICANT HAD FAILED TO ADDUCE SUFFICIENT EVIDENCE OF A SALE IN THAT CASE. NEW INFORMATION HAS COME TO THE ATTENTION OF THE APPLICANT AND IT IS IN A POSITION TO ADDUCE SUCH EVIDENCE NOW. THEREFORE WE WOULD RESPECTFULLY REQUEST THAT THE ONTARIO LABOUR RELATIONS BOARD SHOULD TREAT THIS LETTER AS AN APPLICATION BY LOCALS NO. 206 AND 486 UNDER SECTION 47(A) OF THE LABOUR RELATIONS ACT. SPECIFICALLY, WE REQUEST THE ONTARIO LABOUR RELATIONS BOARD TO DEFINE THE COMPOSITION OF THE BARGAINING UNIT REFERRED TO IN SECTION 47(A)(2). REPRESENTATIVES OF THE APPLICANT WILL, IN THE USUAL WAY, BE PREPARED TO ATTEND ANY HEARING THAT MAY BE FIXED BY THE BOARD.

4. THE RESPONDENT UNION OF CANADIAN RETAIL EMPLOYEES OPPOSED THE APPLICATION ON ALTERNATE GROUNDS. IT WAS THE RESPONDENT UNION'S POSITION THAT THE ISSUE BETWEEN THE PARTIES HAD BEEN DETERMINED BY THE BOARD'S DECISION OF AUGUST 1ST IN THE EARLIER CASE. THE RESPONDENT UNION ARGUED THAT THE BOARD, HAVING REFUSED TO FIND THAT THERE HAD BEEN A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A, AS REQUESTED BY THE APPLICANT, IT MUST BE INFERRED FROM THAT DECISION THAT THE BOARD HAD THEREBY FOUND THAT THERE HAD NOT BEEN A SALE OF A BUSINESS SINCE THE EARLIER APPLICATION WAS DISMISSED. THE RESPONDENT UNION ACCORDINGLY ARGUED THAT THE DOCTRINE OF RES JUDICATA SHOULD APPLY AND THE INSTANT APPLICATION SHOULD THEREFORE BE DISMISSED.

5. IN THE ALTERNATIVE THE RESPONDENT UNION ARGUED THAT THE APPLICANT SHOULD HAVE REQUESTED THE BOARD TO REVIEW ITS EARLIER DECISION ON THE GROUNDS OF THE ALLEGED NEWLY DISCOVERED EVIDENCE. SINCE THE BOARD IN THE INSTANT CASE IS DIFFERENTLY CONSTITUTED THAN THE BOARD IN THE EARLIER CASE, IT WAS ARGUED THAT IT HAS NO JURISDICTION TO DEAL WITH THE REQUEST FOR REVIEW OF THE EARLIER DECISION AND THIS DIVISION OF THE BOARD SHOULD THEREFORE DISMISS THE INSTANT APPLICATION.

6. THE CORPORATE RESPONDENTS INDICATED THAT THEY DID NOT WISH TO TAKE SIDES BY SUPPORTING ONE UNION AGAINST THE OTHER. IT WAS APPARENT, HOWEVER, THAT THE CORPORATE RESPONDENTS WOULD NOT BE DISPLEASED IF THE BOARD WERE TO GIVE EFFECT TO THE RESPONDENT UNION'S ARGUMENT.

7. THE RESPONDENT UNION REFERRED THE BOARD TO THE WRIGHT ASSEMBLIES LIMITED CASE, 61 C.L.L.C. ¶16,215, WHEREIN THE BOARD SUMMARIZED THE APPLICABLE LAW ON THE PLEA OF RES JUDICATA. IT IS INTERESTING TO NOTE THAT THE APPLICANT ALSO RELIED ON THE WRIGHT ASSEMBLIES LIMITED CASE IN SUPPORT OF ITS POSITION.

8. THE BOARD IN ITS DECISION OF AUGUST 1, 1969, REFERRED TO ABOVE, AFTER SETTING OUT THE FACTS PRESENTED TO IT, SUMMARIZED ITS CONCLUSIONS AS FOLLOWS:

AS THE BOARD STATED IN THE SUPER CITY LIMITED CASES, OLRB MONTHLY REPORT MAY 1964, P. 93, THE ONUS RESTS ON THE APPLICANT TO PRODUCE BEFORE THE BOARD THE ESSENTIAL EVIDENCE UPON WHICH IT SEEKS TO BASE ITS CLAIM FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. IN THE PRESENT INSTANCE, THE BOARD FINDS THAT THE ESSENTIAL EVIDENCE WAS NOT ADDUCED. IT IS TRUE THAT CERTAIN FACTS WERE PRESENTED, BUT THESE DO LITTLE MORE THAN PROVIDE GROUNDS FOR VARIED SPECULATION AS TO THE REAL NATURE OF WHAT TOOK PLACE WITH RESPECT TO THE TWO STORES INVOLVED. THERE ARE INDICATIONS THAT THE RESPONDENT COMPANIES MAY HAVE BEEN PAWNS IN SOME KIND OF CORPORATE CHESS GAME, BUT THERE IS NO EVIDENCE AS TO WHO THE MOVER OR MOVERS MIGHT BE. IT IS NOT, AS THE ABOVE CITED CASE IMPLIES, FOR THE BOARD TO UNDERTAKE AN INQUIRY OF ITS OWN INTO THE MATTER. IT RELIES UPON THE EVIDENCE PRESENTED TO IT AT THE HEARING. THE APPLICATION IS ACCORDINGLY DISMISSED.

9. IT IS READILY APPARENT FROM THE QUOTATION CITED ABOVE THAT THE BOARD IN THE EARLIER CASE DID NOT HAVE SUFFICIENT EVIDENCE BEFORE IT TO ENABLE THE BOARD TO MAKE A DETERMINATION ON THE MERITS OF THE ISSUE. IT IS ALSO TO BE NOTED THAT IN DISMISSING THE FIRST APPLICATION, THE BOARD DID NOT IMPOSE A BAR TO ANY SUBSEQUENT APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 77(2)(1) OF THE ACT.

10. UNDER SECTION 47A(2) OF THE ACT, WHERE THERE HAS BEEN A SALE OF A BUSINESS BY AN EMPLOYER WHO IS BOUND BY A COLLECTIVE AGREEMENT, THE TRADE UNION THAT FORMERLY REPRESENTED EMPLOYEES OF THE VENDOR CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT OF THE EMPLOYEES CONCERNED. WHILE THE APPLICANT IN THE FIRST CASE FAILED TO PRODUCE THE ESSENTIAL EVIDENCE TO ESTABLISH THAT THERE HAD BEEN A SALE OF A BUSINESS, SUCH FAILURE BY THE APPLICANT IN NO WAY ALTERS THE FACTS WHICH MAY EXIST IN SUPPORT OF ITS POSITION. IF THERE HAD ACTUALLY BEEN THE SALE OF A BUSINESS, THE FAILURE OF THE APPLICANT TO PROVE IT DOES NOT CHANGE THE FACT OF THE SALE AND THE APPLICANT, PURSUANT TO THE PROVISIONS OF SECTION 47A,

WOULD CONTINUE TO REPRESENT THE EMPLOYEES UNTIL THE BOARD OTHERWISE DIRECTS. SINCE THE BOARD IN THE EARLIER CASE DID NOT HAVE SUFFICIENT EVIDENCE BEFORE IT TO MAKE THE DETERMINATION REQUESTED, IT WAS UNABLE TO DIRECT THAT THE APPLICANT DID OR DID NOT CONTINUE TO REPRESENT THE EMPLOYEES CONCERNED.

11. SINCE THE RIGHTS, IF ANY, OF THE APPLICANT ARE CREATED BY OPERATION OF SECTION 47A, IT IS IN THE INTEREST OF ALL PARTIES TO HAVE A FINAL DETERMINATION MADE AS TO THE EXTENT OF THOSE RIGHTS. NOTHING WOULD HAVE BEEN GAINED BY THE IMPOSITION OF A SIX MONTH BAR TO A SUBSEQUENT APPLICATION BY THE APPLICANT NOR SHOULD THE BOARD IN THE INSTANT CASE REFUSE TO ENTERTAIN THE INSTANT APPLICATION SINCE THE VALIDITY OF THE APPLICANT'S CLAIM HAS NOT BEEN DETERMINED AND THE CONFUSION BETWEEN THE PARTIES REMAINS.

12. FOR SIMILAR REASONS IT MUST BE FOUND THAT THE RESPONDENT UNION FAILED TO ESTABLISH THAT THE PLEA OF RES JUDICATA SHOULD SUCCEED IN THE INSTANT CASE. THE BOARD IN THE FIRST APPLICATION DID NOT MAKE ANY DETERMINATION ON THE MERITS OF THE ISSUE IN DISPUTE. IN THE WRIGHT ASSEMBLIES LIMITED CASE (SUPRA) THE BOARD STATED IN PART AS FOLLOWS:

IT IS AN INDISPENSABLE CONDITION, HOWEVER, TO THE SUCCESS OF THE PLEA OF RES JUDICATA THAT THE EARLIER PROCEEDING, INVOLVING THE SAME ISSUES, QUESTIONS OR FACTS, RESULTED IN A JUDGMENT ON THE MERITS. FOR INSTANCE, IT HAS BEEN HELD THAT THE DISMISSAL OF A PREVIOUS ACTION, FOR WANT OF PROSECUTION, OR FAILURE TO COMPLY WITH AN ORDER FOR SECURITY FOR COSTS, DEFECTS IN PLEADINGS, OR PREMATURITY, DOES NOT BAR A SUBSEQUENT SUIT INVOLVING THE SAME ISSUES AND FACTS. IN THESE INSTANCES THE COURTS HAVE NOT TREATED THE DISMISSAL AS A FINAL ADJUDICATION ON THE MERITS. (SEE MAYZEL V. STURM [1957] 240; McGOWAN V. MENOSCO MANUFACTURING COMPANY [1941] O.W.N. 133; TALOSNOK V. TALOSNOK [1957] O.W.N. 273; McINTOSH V. PARENT SUPRA; SMITH V. MERCHANTS BANK (1917) 40 O.L.R. 309; RE DOTY & MARKS 57 O.L.R. 623 (C.A.) BARBER V. McCUAIG (1900) 31 O.R., 593 PHIPSON IBID. P. 423.)
FURTHER,

... A JUDGMENT IN FAVOUR OF A DEFENDANT
IS NOT ALWAYS AS DECISIVE IN HIS FAVOUR ON

THE POINTS IN ISSUE AS A JUDGMENT FOR A PLAINTIFF WOULD BE, DESPITE THE FACT THAT IT IS EQUALLY CONCLUSIVE OF THE CLAIM BROUGHT. WHERE A PLAINTIFF RECOVERS JUDGMENT, IT ALMOST NECESSARILY FOLLOWS THAT ALL ISSUES RAISED BY THE DEFENDANT HAVE BEEN DETERMINED IN THE PLAINTIFF'S FAVOUR; THERE MUST AT LEAST HAVE BEEN A DECISION ON THE MERITS. ON THE OTHER HAND, A JUDGMENT MAY HAVE PASSED IN FAVOUR OF THE DEFENDANT ON DILATORY GROUNDS, OR ON ONE ONLY OF MANY ALTERNATIVE DEFENCES; AND CIRCUMSTANCES MAY HAVE ARISEN ENTITLING THE PLAINTIFF TO JUDGMENT WHICH WERE NOT IN EXISTENCE WHEN THE FIRST ACTION WAS BROUGHT. THE BURDEN IS ON THE DEFENDANT TO SHOW THAT THE JUDGMENT RELIED ON WAS OBTAINED ON GROUNDS, OR IN CIRCUMSTANCES, WHICH AFFORD HIM A DEFENCE TO THE SUBSEQUENT ACTION. (HALSBURY'S LAWS OF ENGLAND, 3RD ED. VOL. 15, P. 202.)

IT IS TRUE THAT A JUDGMENT DISMISSING THE PLAINTIFF HAS THE SAME EFFECT AS A JUDGMENT UPON THE MERITS. (ARMOUR V. BATE, [1891] 2 Q.B. 233,) BUT IN THE CASE OF SUCH A JUDGMENT, AS IN THE CASE OF A JUDGMENT BY CONSENT, IT DOES NOT FOLLOW NECESSARILY THAT AN ESTOPPEL BY RES JUDICATA HAS BEEN CREATED. UPON THE QUESTION BEING RAISED IT IS THE DUTY OF THE COURT TO LOOK INTO THE PROCEEDING, AND TO ASCERTAIN DEFINITELY WHAT MATTERS WERE IN FACT DECIDED BY THE JUDGMENT IN THE PREVIOUS ACTION. (SPENCER BOWER ON RES JUDICATA, P. 24.)

13. HAD THE EVIDENCE IN THE FIRST CASE CAUSED THE BOARD TO MAKE A DETERMINATION THAT THERE HAD NOT BEEN A SALE OF A BUSINESS, THEN OF COURSE THE PLEA OF RES JUDICATA WOULD LIKELY BE SUCCESSFUL SINCE THE BOARD WOULD HAVE MADE A JUDGMENT ON THE MERITS OF THE CASE IN THE FIRST APPLICATION. IF NEW EVIDENCE CAME TO THE ATTENTION OF THE APPLICANT FOLLOWING A JUDGMENT ON THE MERITS, THE ONLY REMEDY OPEN TO THE APPLICANT WOULD BE TO REQUEST A REVIEW PURSUANT TO THE PROVISIONS OF SECTION 79(1) OF THE ACT. HOWEVER, SUCH IS

NOT THE SITUATION IN THE INSTANT CASE. SINCE THERE HAS BEEN NO DETERMINATION ON THE MERITS, THIS IS NOT A SITUATION WHERE THE APPLICANT'S ONLY REMEDY IS TO REQUEST THE BOARD TO REVIEW ITS DECISION IN THE FIRST APPLICATION. IF THE ALLEGED NEW EVIDENCE COULD NOT HAVE BEEN DISCOVERED WITH REASONABLE DILIGENCE PRIOR TO THE HEARING IN THE FIRST APPLICATION THE APPLICANT COULD HAVE REQUESTED THE DIVISION OF THE BOARD WHICH HEARD THE FIRST APPLICATION TO REVIEW ITS DECISION, HOWEVER, THERE IS NOTHING IN THE ACT TO REQUIRE THE APPLICANT TO DO SO. AGAIN, IF THE ALLEGED NEW EVIDENCE WAS AVAILABLE PRIOR TO THE FIRST HEARING THEN A REVIEW OF THE FIRST DECISION IS NOT AVAILABLE TO THE APPLICANT AND THE APPLICANT MUST BE BOUND BY THE RESULTS OF THE DECISION OF AUGUST 1ST IN SO FAR AS THE FIRST APPLICATION IS CONCERNED SINCE THERE MUST BE SOME FINALITY TO PROCEEDINGS BEFORE THE BOARD. HOWEVER, WHETHER THE EVIDENCE IS NEW EVIDENCE OR MERELY ADDITIONAL EVIDENCE, IT IS A MUCH CLEANER PROCEDURE TO COME IN AFRESH, AS THE APPLICANT HAS DONE IN THE INSTANT CASE, IN ORDER THAT A FINAL DETERMINATION CAN BE MADE AS TO THE RIGHTS, IF ANY, THE APPLICANT ENJOYS PURSUANT TO THE PROVISIONS OF SECTION 47A.

14. WHILE THE PARTIES SHOULD NOT BE PERMITTED TO ABUSE THE PROCESSES OF THE BOARD BY REPETITIVE APPLICATIONS CONCERNING THE SAME SUBJECT MATTER, THERE IS NOTHING BEFORE THE BOARD, AT THIS TIME, WHICH WOULD INDICATE THAT THE INSTANT APPLICATION HAS BEEN BROUGHT MERELY TO HARASS OR INTIMIDATE THE RESPONDENTS, OR ANY OF THEM.

15. FOR THE REASONS OUTLINED ABOVE, WE THEREFORE FIND THAT THE APPLICANT SHOULD BE PERMITTED TO CALL ALL THE EVIDENCE AVAILABLE TO IT SO THAT A FINAL DETERMINATION CAN BE MADE ON THE MERITS OF THIS CASE.

16. THE REGISTRAR IS ACCORDINGLY DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OUTSTANDING ISSUES.

INDEXED ENDORSEMENT - SECTION 79(2)

16470-69-M: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 131 (APPLICANT) v. THE BORDEN COMPANY LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

DECISION OF THE BOARD: NOVEMBER 12, 1969.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT HAS REQUESTED THE BOARD TO MAKE A DETERMINATION AS TO WHETHER LEONARD PETER SMITH, CLASSIFIED AS SUPERVISOR OF PROGRAMMING, RONALD DUNSFORD, CLASSIFIED AS ICE CREAM COST SUPERVISOR, AND VERN KAY, CLASSIFIED AS SUPERVISOR OF FLUID MILK COST ACCOUNTS, ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED SEPTEMBER 24, 1969 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, IT APPEARS THAT LEONARD PETER SMITH HAD OCCUPIED HIS PRESENT POSITION FOR SOME SEVEN OR EIGHT MONTHS PRIOR TO THE TIME HE WAS EXAMINED. WHILE MR. SMITH AND MR. KAY CLAIMED TO HAVE CERTAIN FUNCTIONS SUCH AS THE AUTHORITY TO HIRE AND FIRE, THEY HAVE NOT HAD AN OPPORTUNITY TO EXERCISE THESE FUNCTIONS PRIOR TO THEIR EXAMINATION, BECAUSE OF THE FACT THAT THEY HAVE HELD THEIR POSITIONS FOR ONLY A FEW MONTHS PRIOR TO THE TIME THEY WERE EXAMINED IN THIS MATTER. IT APPEARS THAT MR. DUNSFORD WHO HAS HELD A SIMILAR POSITION FOR TWO YEARS HAS IN FACT BEEN ACTIVELY ENGAGED IN THE HIRING PROCESS AND HAS ACTUALLY EXERCISED THE AUTHORITY WHICH HE CLAIMS TO HAVE. SINCE IT IS OUR ASSESSMENT THAT THE PERSONS IN THE THREE CLASSIFICATIONS HAVE BEEN GIVEN SIMILAR AUTHORITY, WE FIND THAT ALTHOUGH SMITH AND KAY HAVE NOT EXERCISED SOME OF THE AUTHORITY WHICH THE RESPONDENT HAS GIVEN THEM, THIS FACT DOES NOT TAKE AWAY ANY OF THE AUTHORITY WHICH THEY HAVE. WE THEREFORE FIND THAT SMITH, DUNSFORD AND KAY ARE INVOLVED IN SUCH MATTERS AS HIRING, FIRING, DISCIPLINE AND SUPERVISION OF EMPLOYEES. THEY ALSO GRANT TIME OFF, ASSIGN WORK, ATTEND MANAGEMENT MEETINGS AND MAKE EFFECTIVE RECOMMENDATIONS WHICH WILL EFFECT THE EMPLOYMENT STATUS OF PERSONS OVER WHOM THEY EXERCISE SUPERVISORY POWERS. WHEN THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, OLRB MONTHLY REPORT, SEPTEMBER 1966, P. 379 ARE APPLIED TO THE FACTS OF THIS CASE, THE BOARD FINDS THAT SMITH, DUNSFORD AND KAY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT.

4. THE EXAMINER ALSO INQUIRED INTO AND REPORTED TO THE BOARD ON THE EXTENT OF CHANGE, IF ANY, IN THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS WHOSE CLASSIFICATIONS WERE EXCLUDED FROM THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT WHICH HAS TAKEN PLACE SINCE DECEMBER 1967, THE DATE THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES WAS EXECUTED. IT WAS THE APPLICANT'S POSITION THAT BECAUSE OF CERTAIN ADMINISTRATIVE CHANGES MADE BY THE RESPONDENT FOLLOWING THE EXECUTION OF THE COLLECTIVE AGREEMENT, THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN DISPUTE HAVE SUBSTANTIALLY CHANGED. THE APPLICANT ARGUED THAT AS A RESULT OF THE ALLEGED CHANGE IN THEIR DUTIES AND RESPONSIBILITIES THE APPLICANT

SHOULD NOT BE BOUND BY ANY AGREEMENT OR FINDING OF THE BOARD WITH RESPECT TO THE STATUS OF THE PERSONS IN DISPUTE, SINCE THE CHANGES IN THEIR JOBS CAUSED THE DUTIES AND RESPONSIBILITIES NOW EXERCISED BY THEM TO BE DUTIES AND RESPONSIBILITIES OF EMPLOYEES FOR THE PURPOSES OF THE ACT. IT IS THE APPLICANT'S POSITION THAT THE PERSONS IN THE DISPUTED CLASSIFICATIONS HAVE, AS A RESULT OF THE ALLEGED CHANGES, CEASED TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

5. BEFORE DEALING WITH THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, IT SHOULD BE NOTED THAT THE BOARD CAN ONLY CONCERN ITSELF WITH THE EVIDENCE OF ANY CHANGES THAT HAVE TAKEN PLACE SINCE THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO. THE BOARD HAS NO APPELLATE JURISDICTION OVER FINDINGS MADE BY ANOTHER DIVISION OF THE BOARD AT THE TIME THE APPLICANT WAS CERTIFIED AND CANNOT THEREFORE CONSIDER THE EVIDENCE AS TO THE DUTIES AND RESPONSIBILITIES OF THE DISPUTED CLASSIFICATIONS AB INITIO. AGAIN, THE BOARD WILL NOT PERMIT ONE OF THE PARTIES TO UNILATERALLY REPUDIATE AN AGREEMENT THAT A CERTAIN PERSON BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE OF HIS MANAGERIAL FUNCTIONS. IN ORDER THAT THE APPLICANT SUCCEED IN THIS MATTER, IT MUST ESTABLISH THAT SINCE THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO THERE HAVE BEEN SUBSTANTIAL CHANGES IN THE DUTIES AND RESPONSIBILITIES OF THE DISPUTED PERSONS AND THAT SUCH CHANGES HAVE CAUSED THEIR DUTIES AND RESPONSIBILITIES TO CEASE TO BE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.

6. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, WE FIND THAT ALTHOUGH CERTAIN CHANGES HAVE BEEN MADE, SUCH CHANGES HAVE NOT CAUSED THE EMPLOYEES IN THE DISPUTED CLASSIFICATIONS TO PERFORM A SUBSTANTIALLY DIFFERENT TYPE OF WORK THAN THEY PREVIOUSLY PERFORMED. WHILE THERE WERE CERTAIN CHANGES, THE PERSONS IN THE DISPUTED CLASSIFICATIONS EXERCISED THE SAME KIND OF AUTHORITY THAT THEY PREVIOUSLY EXERCISED AT THE TIME THEY WERE EXCLUDED FROM THE BARGAINING UNIT.

7. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS FAILED TO SATISFY THE ONUS ON IT THAT THERE HAS BEEN ANY MATERIAL CHANGE IN THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN THE DISPUTED CLASSIFICATIONS WHICH WOULD PERMIT THE BOARD TO FIND THAT THEY DO NOT NOW EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY FINDS THAT THERE HAS BEEN NO SUBSTANTIAL DECREASE IN THE DUTIES AND RESPONSIBILITIES OF THE FOLLOWING PERSONS. THE BOARD IS THEREFORE NOT PREPARED TO FIND THAT G. ZENGLEIN, A. OUELLETTE, H. MALEY, G. WINDE, N. LUCAS, C. DEBONO AND R. PYBURN ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT.

8. THE APPLICATION OF THE APPLICANT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 79A

16324-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (TRADE UNION) V. LAMBTON LANDS LIMITED (EMPLOYER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: HUGH BUCHANAN, DON COLLINS FOR THE
TRADE UNION; N. S. COOK, M. R. NEESAM FOR THE EMPLOYER.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
F. W. MURRAY: NOVEMBER 19, 1969.

1. THIS IS A REFERENCE TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION IS WHETHER THE MINISTER OF LABOUR HAS THE AUTHORITY UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.
2. IT APPEARED FROM THE EVIDENCE AND REPRESENTATIONS THAT ROBERTS PROKOPEC LTD. (HEREINAFTER REFERRED TO AS "ROBERTS") OWNED AND OPERATED THE GUILDWOOD INN IN SARNIA AND IN THE NAME OF THE GUILDWOOD INN HAD A COLLECTIVE AGREEMENT WITH THE APPLICANT UNION. IN JUNE OF 1968 LAMBTON LANDS LIMITED (HEREINAFTER REFERRED TO AS "LAMBTON") PURCHASED EITHER ALL OR A SUBSTANTIAL NUMBER OF THE OUTSTANDING SHARES OF ROBERTS. IN JANUARY 1969 THE GUILDWOOD INN CLOSED FOR ALTERATIONS AND REOPENED IN OR ABOUT MAY OF 1969.
3. ON MARCH 27TH, 1969 LAMBTON AND ROBERTS ENTERED INTO AN AGREEMENT WHEREBY LAMBTON WAS TO SUPPLY ROBERTS A "STAFF OF EMPLOYEES TO PERFORM THE DUTIES THAT MAY BE REQUESTED BY (ROBERTS) IN THE BARS, DINING ROOM AND KITCHEN OF THE GUILDWOOD INN." IN CONSIDERATION, ROBERTS AGREED TO PAY LAMBTON TEN PER CENT OF ALL GROSS SALES OF LIQUOR AND FOOD SOLD AT THE GUILDWOOD INN AND TO BE SOLELY RESPONSIBLE FOR THE ARRANGEMENTS OF "RELIEFS AND SUBSTITUTIONS, PAY, SUPERVISION, DISCIPLINE, UNEMPLOYMENT INSURANCE, WORKMEN'S COMPENSATION, LEAVE AND UNIFORMS, AND ALL OTHER MATTERS ARISING OUT OF THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE." THE AGREEMENT WAS FOR ONE YEAR AND COULD BE CANCELLED BY EITHER PARTY ON 30 DAYS' NOTICE. THERE IS A SIMILAR AGREEMENT BETWEEN LAMBTON AND ROBERTS DATED MARCH 27TH 1969 WITH RESPECT TO THE MAINTENANCE STAFF.
4. AT THE DATE OF THIS APPLICATION, THE VICE-PRESIDENT OF LAMBTON AND ROBERTS WAS ROBERT BLOK-ANDERSEN AND THE PRESIDENT OF LAMBTON WAS THE VICE-PRESIDENT OF ROBERTS, AND THE ASSISTANT SECRETARY OF LAMBTON WAS THE SECRETARY-TREASURER OF ROBERTS. LAMBTON IS ALSO A SUBSTANTIAL SHARE-HOLDER OF ROBERTS.

5. THE MANAGER OF THE GUILDWOOD INN IS MALCOLM NEESAM AND HE HAD BEEN GENERAL MANAGER PRIOR TO JANUARY 1ST 1969 AND WAS THE PERSON WHO HAD GIVEN NOTICE TO THE EMPLOYEES OF THE ALTERATIONS AND ALSO HAD ADVISED THEM THAT THEY WOULD BE LAID OFF. ON MARCH 28TH 1969, BY A LETTER WHICH WAS FILED WITH THE BOARD AS EXHIBIT 2, MR. NEESAM ADVISED THE EMPLOYEES THAT THE FOOD AND BEVERAGE OPERATIONS WERE TO BE CONTRACTED OUT AND HE FURTHER STATED:

"SHOULD YOU WISH YOUR SERVICES TO BE GIVEN CONSIDERATION BY THE CONTRACTOR WILL YOU PLEASE FILL IN THE ENCLOSED APPLICATION FORM AND RETURN IT TO ME AS SOON AS POSSIBLE."

THE BOARD WAS ADVISED AT THE HEARING THAT MR. NEESAM IS PRESENTLY EMPLOYED BY LAMBTON AND AMONG HIS DUTIES HE CONTINUES AS MANAGER OF THE GUILDWOOD INN.

6. THE RECOGNITION CLAUSE OF THE LAPSED COLLECTIVE AGREEMENT WHICH EXISTED BETWEEN THE GUILDWOOD INN AND THE APPLICANT UNION COVERED "ALL EMPLOYEES OF THE GUILDWOOD INN HOTEL, KITCHEN, DINING ROOM, LOUNGES, COCKTAIL LOUNGES" WITH THE EXCEPTION OF CERTAIN PERSONS WHO ARE NOT MATERIAL TO THESE REASONS. THE COLLECTIVE AGREEMENT WAS SIGNED FOR AND ON BEHALF OF GUILDWOOD INN BY R. BLOK-ANDERSEN.

7. IN ARRIVING AT A CONCLUSION IT IS IMPORTANT TO NOTE THAT THE BOARD'S JURISDICTION IN THIS CASE IS A NARROW ONE. THE UNION HAS GIVEN NOTICE TO BARGAIN TO LAMBTON PURSUANT TO SECTION 47(A) OF THE LABOUR RELATIONS ACT CLAIMING THAT A SALE OF BUSINESS HAD TAKEN PLACE. LAMBTON REFUSED TO BARGAIN CLAIMING THAT NO SALE OF BUSINESS HAD OCCURRED. THE UNION APPLIED FOR CONCILIATION AND THE COMPANY RESISTED CONCILIATION MAINTAINING THAT NOTICE TO BARGAIN PURSUANT TO SECTION 47(A) WAS IMPROPER AS THERE HAD BEEN NO SALE OF BUSINESS. BOTH PARTIES AGREED THAT THE MATTER BE REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A FOR A DETERMINATION AS TO WHETHER SECTION 47(A) WAS APPLICABLE. IN ORDER TO DETERMINE THAT QUESTION IT IS NECESSARY TO DETERMINE WHETHER OR NOT THERE HAD BEEN A SALE OF BUSINESS. IT IS TO THIS STRICTLY CONFINED QUESTION THAT THE BOARD IS REQUIRED TO ADDRESS ITSELF.

8. WE ARE OF THE OPINION THAT THE TRANSACTIONS IN QUESTION DO NOT CONSTITUTE THE SALE OF A BUSINESS PURSUANT TO SECTION 47(A) OF THE LABOUR RELATIONS ACT. THIS IS NOT A SALE WITHIN THE MEANING OF SECTION 47(A) BUT RATHER LAMBTON IS SUPPLYING A STAFF TO ROBERTS IN CERTAIN AREAS FOR A FEE. THERE IS ALSO NO SUGGESTION THAT THE TRANSACTION CONSTITUTED A DELIBERATE ATTEMPT TO DEFEAT THE UNION. WE ARE THEREFORE CONSTRAINED TO FIND THAT THE PARTICULAR TRANSACTIONS DO NOT CONSTITUTE A SALE OF BUSINESS PURSUANT TO SECTION 47(A). WE THEREFORE RESPECTFULLY REPORT TO THE MINISTER

THAT THERE HAS BEEN NO SALE OF A BUSINESS AND THEREFORE THE MINISTER OF LABOUR DOES NOT HAVE THE AUTHORITY PURSUANT TO SECTION 47(A) TO APPOINT A CONCILIATION OFFICER.

DECISION OF BOARD MEMBER D. B. ARCHER: NOVEMBER 19, 1969.

WHILE I HAVE A GREAT DEAL OF SYMPATHY WITH THE DECISION ARRIVED AT AND THE REASON FOR THE SAME BY THE MAJORITY IN THIS CASE, I FEEL THAT IF THE LEGISLATION IS TO BE GIVEN ITS TRUE MEANING AND FULL INTENT THE MINISTER SHOULD BE ADVISED TO ALLOW CONCILIATION SERVICES TO BE GRANTED. QUOTING FROM THE ACT:

47A.-(1) IN THIS SECTION

- (A) "BUSINESS" INCLUDES A PART THEREOF;
- (B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER DISPOSITION, AND SOLD AND SALE HAVE THE SAME MEANINGS."

HAVING REGARD TO THE RELATIONSHIP BETWEEN ROBERTS AND LAMBTON I AM SATISFIED THAT THE TRANSACTION BETWEEN ROBERTS AND LAMBTON WHICH HAS BEEN PLACED IN ISSUE, CONSTITUTES A DISPOSITION WITHIN THE MEANING OF "SELLS" IN 47A (1)(B). I AM ALSO OF THE OPINION THAT IN THESE CIRCUMSTANCES THAT "SERVICE" IS AN ESSENTIAL ASSET OF A HOTEL BUSINESS AND FORMS A "PART THEREOF" WITHIN THE MEANING OF SECTION 47A(1)(B). THIS IS PARTICULARLY SO WHEN ONE CONSIDERS THAT THE BAR, DINING ROOM AND KITCHEN ARE AREAS OF SERVICE FROM WHICH THE HOTEL DERIVES A SUBSTANTIAL REVENUE. THIS IS CORROBORATED BY THE FINANCIAL INFORMATION PROVIDED BY THE RESPONDENT.

I MUST CONCLUDE THEREFORE THAT THE MINISTER HAS AUTHORITY TO MAKE THE APPOINTMENT REQUESTED.

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

16237(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCALS 27, 3233, 681, 3227, 666 AND 1963 AND THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, F. GODDARD AND R. FORD FOR THE COMPLAINANT; H. M. ROSSMAN, W. J. CHENERY, R. A. McLELLAN, L. B. CROSSING, A. L. COUGE AND J. STOYAN FOR THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO; T. E. ARMSTRONG, B. CHERCOVER, E. STEWART, B. CLARK AND W. STEFANOVITCH FOR THE RESPONDENT UNIONS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: NOVEMBER 27, 1969.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT (HEREINAFTER REFERRED TO AS THE "LABOURERS") IS REQUESTING THAT THE BOARD MAKE A DIRECTION WITH RESPECT TO A DISPUTE THAT HAS ARISEN BETWEEN THE LABOURERS AND THE RESPONDENT UNIONS (HEREINAFTER REFERRED TO AS THE "CARPENTERS") OVER AN ASSIGNMENT OF WORK THAT HAS BEEN MADE BY THE RESPONDENT THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (HEREINAFTER REFERRED TO AS "HYDRO") ON ITS PICKERING GENERATING STATION PROJECT (HEREINAFTER REFERRED TO AS THE "PICKERING PROJECT").

3. THE NATURE OF THE WORK IN DISPUTE IS THE RELEASING AND STRIPPING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS. THAT IS TO SAY, THE REMOVAL OF THE BRACES AND STRONGBACKS, THE HARDWARE I.E. WEDGES AND CLAMPS, STUDS AND FINALLY THE RELEASING OF THE 2'X 8' OR 4' X 8' PIECES OF PLYWOOD FROM THE SURFACE OF CONCRETE WALLS. IN SHORT, THE DISMANTLING OF THE ENTIRE FORM.

4. DURING THE PERIOD FROM THE LATE 1940'S TO THE LATTER PART OF THE 1950'S, HYDRO LARGELY USED "BUILT-IN-PLACE" PLYWOOD FORMS FOR THE POURING OF CONCRETE WALLS. FROM APPROXIMATELY 1957 TO THE PRESENT, HYDRO INCREASINGLY HAS USED PANEL FORMS FOR THE POURING OF CONCRETE WALLS. THESE PANEL FORMS ARE EITHER MADE OF PIECES OF PLYWOOD WITH A PERMANENTLY ATTACHED WOODEN FRAMING OR ARE MADE OF METAL. HYDRO, ON A SUBSTANTIALLY REDUCED SCALE, HOWEVER, HAS CONTINUED TO USE "BUILT-IN-PLACE" WALL FORMS. AN EXAMPLE IS THE PICKERING PROJECT WITH WHICH WE ARE HERE CONCERNED. ON THIS PROJECT, THE "BUILT-IN-PLACE" FORMS CONSTITUTE ONLY BETWEEN FIVE AND TEN PER CENT OF THE FORMS BEING USED, THE REMAINDER BEING VARIOUS TYPES OF PANEL FORMS.

5. THE EVIDENCE OF SENIOR HYDRO CONSTRUCTION OFFICIALS WHO TESTIFIED IN THIS PROCEEDING IS THAT IT HAS BEEN THE POLICY OF HYDRO SINCE IT COMMENCED TO USE "BUILT-IN-PLACE" PLYWOOD WALL FORMS TO ASSIGN THE RELEASING AND STRIPPING OF THE ENTIRE FORM TO LABOURERS WITH THE EXCEPTION OF THE REMOVAL OF THE HARDWARE I.E. WEDGES AND CLAMPS, WHICH HAS BEEN CONSISTENTLY ASSIGNED TO THE CARPENTERS. THESE OFFICIALS CONCEDED, HOWEVER, THAT THERE HAVE BEEN DEPARTURES FROM THIS GENERAL POLICY.

6. THE FIRST COLLECTIVE AGREEMENT BETWEEN HYDRO AND SOME EIGHTEEN NAMED INTERNATIONAL TRADE UNIONS DATED OCTOBER 3, 1953 WAS ENTERED INTO AT THE TIME THAT THE COMMISSION WAS WORKING ON THE SIR ADAM BECK PROJECT AT NIAGARA FALLS. THIS AGREEMENT PROVIDES A WAGE RATE FOR "WRECKER, BARMAN AND FORM STRIPPER" UNDER THE JURISDICTION OF THE LABOURERS. ALL SUBSEQUENT COLLECTIVE AGREEMENTS INCLUDING THE CURRENT ONE BETWEEN HYDRO AND THE ALLIED CONSTRUCTION COUNCIL, WHICH INTER ALIA COVERS THE PICKERING PROJECT, CONTAINS A WAGE RATE FOR THE SAME CLASSIFICATION OF LABOURERS. THESE AGREEMENTS, IN OUR VIEW, LEND SUPPORT TO THE ASSERTIONS OF HYDRO OFFICIALS AS TO THE COMMISSION'S POLICY WITH RESPECT TO THE ASSIGNMENT OF WORK IN THE STRIPPING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS.

7. WE WOULD MENTION THAT ACCORDING TO THE TESTIMONY OF HYDRO OFFICIALS, IN ADOPTING THE ABOVE POLICY HYDRO ALWAYS CONSIDERED THAT IT WAS ACTING IN CONFORMITY WITH THE "MEMORANDUM ON CONCRETE FORMS" DATED OCTOBER 3, 1949. THE CONTROVERSIAL NATURE OF THIS MEMORANDUM WAS CONSIDERED AT SOME LENGTH IN THE BOARD'S DECISION IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED CASE, OLRB M.R. JAN. 1969 P. 1087. THAT DECISION DEALT WITH THE SAME WORK ASSIGNMENT DISPUTE WHICH IS PRESENTLY BEFORE US.

8. A LARGE VOLUME OF TESTIMONY WAS ADDUCED AS TO THE ACTUAL PRACTICE THAT HAS BEEN ADHERED TO ON HYDRO PROJECTS DURING THE 1950'S AND 1960'S IN THE STRIPPING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS. WITNESSES CALLED BY HYDRO AND THE LABOURERS INCLUDED PERSONNEL EMPLOYEES ON CONSTRUCTION SITES, SUPERINTENDENTS WITH A VARIETY OF TITLES AND GENERAL AND REGULAR FOREMEN. THE LABOURERS ALSO ADDUCED EVIDENCE IN SUPPORT OF THEIR CLAIMS FROM LABOURERS' BUSINESS AGENTS AND EVEN CARPENTER STEWARDS AND JOURNEYMEN CARPENTERS. THE CARPENTERS FOR THEIR PART LARGELY RELIED UPON THE TESTIMONY OF CARPENTERS' BUSINESS AGENTS AND REPRESENTATIVES, CARPENTER FOREMEN, STEWARDS AND JOURNEYMEN CARPENTERS.

9. THE BOARD HEARD EVIDENCE RELATING TO A MULTIPLICITY OF HYDRO PROJECTS THROUGHOUT THE ENTIRE PROVINCE SPANNING TWO DECADES. THIS INCLUDED TESTIMONY CONCERNING PROJECTS, LARGE AND SMALL, IN NORTHERN AND NORTH-WESTERN ONTARIO AS WELL AS EASTERN, WESTERN AND SOUTHERN ONTARIO. PROJECTS AT WHITE DOG AND CARIBOU FALLS, McVITTIE DAM, THE MADAWASKA AND MISSISSAUGA RIVERS, DOUGLAS POINT, LAKEVIEW, LAMBTON, NIAGARA FALLS AND THE CURRENT NANTICOKE SITE NEAR HAMILTON ARE BUT A SELECTION OF LOCATIONS AT WHICH HYDRO HAS BEEN ENGAGED IN CONSTRUCTION WORK. OF COURSE, EXTENSIVE EVIDENCE WAS ALSO LED AS TO THE WORK ASSIGNMENTS AND THEIR EXECUTION AT THE PICKERING PROJECT.

10. IN PRACTICE IT WOULD APPEAR FROM THE EVIDENCE THAT THERE HAVE BEEN VARIATIONS FROM HYDRO'S STATED POLICY RESPECTING THE RELEASING AND STRIPPING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS. IN SOME INSTANCES, WHILE THE STRIPPING OF THESE FORMS HAS BEEN ASSIGNED BY SUPERINTENDENTS AND GENERAL FOREMEN TO LABOURERS, THE WORK HAS BEEN DONE BY CARPENTERS. SOME WITNESSES SUGGESTED THAT THIS STATE OF AFFAIRS HAS RESULTED FROM PRESSURE BEING BROUGHT TO BEAR UPON CARPENTERS' FOREMEN IN CHARGE OF STRIPPING CREWS BY CARPENTERS' BUSINESS AGENTS. THIS SUGGESTION WE WOULD ADD WAS VIGOROUSLY DENIED BY THE CARPENTERS' BUSINESS AGENTS WHO TESTIFIED. IN OTHER INSTANCES, ALTHOUGH HYDRO CONSTRUCTION SUPERVISORS ORIGINALLY ASSIGNED THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS TO THE LABOURERS, CARPENTER BUSINESS AGENTS HAVE PREVAILED UPON HYDRO SUPERVISORS TO CHANGE THE ASSIGNMENT TO CARPENTERS. EVIDENCE BY CARPENTER BUSINESS AGENTS CONFIRMS THAT THIS, IN FACT, HAS BEEN THE CASE. IN ADDITION TO REMOVING THE HARDWARE, CARPENTERS SOMETIMES HAVE REMOVED ANY WALERS WHICH HAVE COME LOOSE WHEN THE HARDWARE IS RELEASED. CARPENTERS ALSO HAVE BEEN ASSIGNED TO REMOVE THE PLYWOOD SHEETING FROM THE FACE OF THE CONCRETE WALLS. AS WELL, CARPENTERS HAVE BEEN ASSIGNED TO STRIP "BUILT-IN-PLACE" WALL FORMS WHEN THEY HAVE NOT OTHERWISE BEEN GAINFULLY OCCUPIED AND LABOURERS HAVE BEEN ASSIGNED TO STRIP PREFABRICATED PANEL FORMS WHEN THEY HAVE HAD NO OTHER WORK AND THE CARPENTERS ON THE JOB ARE OTHERWISE EMPLOYED.

11. THERE IS ALSO EVIDENCE THAT HYDRO OFFICIALS, AS A RESULT OF DISPUTES ON JOBS AND THE COMPLAINTS FROM BUSINESS AGENTS AND UNIONS STEWARDS FOR BOTH TRADES, HAVE MADE COMPROMISE ASSIGNMENTS. THAT IS TO SAY, SOMETIMES THE RESULT HAS BEEN THAT THE WORK OF RELEASING AND STRIPPING OF "BUILT-IN-PLACE" WALL FORMS HAS BEEN ASSIGNED TO COMPOSITE CREWS OF LABOURERS AND CARPENTERS. THE RATIO OF THESE COMPOSITE CREWS HAS RANGED FROM ONE CARPENTER TO FOUR LABOURERS TO ONE CARPENTER TO TWO LABOURERS. WHERE COMPOSITE CREWS HAVE BEEN USED, SOMETIMES THERE HAS BEEN A DIVISION OF JOB FUNCTIONS BETWEEN THE TWO TRADES AND SOMETIMES ALL JOB FUNCTIONS HAVE BEEN INTERCHANGEABLE AS BETWEEN THE LABOURERS AND CARPENTERS. AS WELL, THE USE OF COMPOSITE CREWS HAS NOT ALWAYS BEEN CONFINED TO THE STRIPPING OF "BUILT-IN-PLACE" FORMS BUT HAS EXTENDED AS WELL TO THE STRIPPING OF PREFABRICATED PANEL FORMS. WHEN COMPOSITE CREWS HAVE BEEN USED, IT IS CLEAR FROM THE EVIDENCE THAT NEITHER THE LABOURERS NOR CARPENTERS HAVE MADE ANY CONCESSIONS WITH RESPECT TO THEIR RESPECTIVE JURISDICTIONAL CLAIM TO THE WORK. INDEED, THE EVIDENCE INDICATES THAT IN A COMPOSITE CREW ARRANGEMENT, THE LABOURERS AND CARPENTERS ON THE JOB HAVE OPENLY COMPETED FOR AS MUCH OF THE WORK AS POSSIBLE TO SUPPORT THEIR CLAIMS, OFTEN WITH LITTLE OR NO REGARD FOR THE ACTUAL ASSIGNMENT OF WORK MADE BY HYDRO. NOTWITHSTANDING, WHETHER CARPENTERS OR COMPOSITE CREWS OF LABOURERS AND CARPENTERS HAVE

STRIPPED "BUILT-IN-PLACE" WALL FORMS, IT IS A FAIR STATEMENT THAT HYDRO'S POLICY AND DESIRE IS TO HAVE THE WORK WHICH IS THE SUBJECT OF THIS DISPUTE PERFORMED BY LABOURERS.

12. CONSTRUCTION ON THE PICKERING PROJECT COMMENCED IN 1966. NO SIGNIFICANT AMOUNT OF STRIPPING OF FORMS AND IN PARTICULAR "BUILT-IN-PLACE" PLYWOOD WALL FORMS, HOWEVER, WAS DONE UNTIL EARLY IN 1967. A DISPUTE ENSUED BETWEEN THE LABOURERS AND CARPENTERS OVER THE RELEASING AND STRIPPING OF THE LATTER FORMS. THIS PROMPTED HYDRO OFFICIALS TO MEET WITH REPRESENTATIVES OF THE TWO UNIONS AND IT WAS AGREED THAT ALL STRIPPING OF BOTH "BUILT-IN-PLACE" AND PANEL FORMS WOULD BE DONE BY A COMPOSITE CREW IN A RATIO OF TWO LABOURERS TO ONE CARPENTER. NO DIVISION IN THE WORK FUNCTIONS OF THE TWO TRADES WAS MADE. THE CARPENTERS, HOWEVER, NEVER ACKNOWLEDGED THAT THEY WERE WORKING AS AN INTEGRATED CREW NOR DID EITHER TRADE RELINQUISH ANY OF THEIR CLAIMS TO JURISDICTION.

13. IT APPEARS THAT THE STRIPPING OF ALL FORMS PROCEEDED ON THIS BASIS WITH A MINIMUM OF DISHARMONY UNTIL THE SUMMER OF 1968. BY THAT TIME BOTH TRADES WERE EXPRESSING DISSATISFACTION WITH THE ARRANGEMENT AND THE LABOURERS AND CARPENTERS BOTH TRIED TO ASSERT AS WIDE A JURISDICTION AS POSSIBLE OVER THE STRIPPING OF FORMS AND ESPECIALLY THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS. THIS STRUGGLE CONTINUED THROUGHOUT THE SUMMER OF 1968. THE RESULTING DISSENSION AND PRESSURES PROMPTED LAWRENCE CROSSING, THE GENERAL SUPERINTENDENT ON THE PICKERING PROJECT, TO ISSUE A MEMORANDUM TO ALL HYDRO SUPERVISORY STAFF DATED AUGUST 30, 1968 IN AN EFFORT TO STABILIZE THE SITUATION.

14. THE MEMORANDUM OF AUGUST 30, 1968 MADE REFERENCE TO THE GROWING CONFLICT BETWEEN THE LABOURERS AND CARPENTERS OVER THE STRIPPING OF FORMS. THE MEMORANDUM WENT ON TO INSTRUCT ALL SUPERVISORS IN CHARGE OF FORM STRIPPING OPERATIONS TO ASSURE THEMSELVES THAT THIS TYPE OF WORK WAS CARRIED OUT IN THE MANNER IN WHICH IT WAS BEING DONE DURING THE LATTER HALF OF 1967 AND EARLY 1968. THIS OF COURSE MEANT THE COMPOSITE CREW ARRANGEMENT OF TWO LABOURERS TO ONE CARPENTER DOING THE STRIPPING OF ALL FORMS.

15. THE AUGUST 30, 1968 DIRECTIVE STATES THAT THE REMOVAL OF "RE-USABLE FORMS AND ASSOCIATED HARDWARE" WAS THE WORK OF CARPENTERS AND THAT THE "HANDLING, CLEANING AND MOVING OF THESE FORMS AND ASSOCIATED HARDWARE" WAS THE WORK OF LABOURERS. ACCORDING TO CROSSING AND ROBERT MCLELLAN, THE PERSONNEL OFFICER ON THE PROJECT, IN HYDRO'S LANGUAGE USAGE THE TERM "RE-USABLE FORMS AND ASSOCIATED HARDWARE" REFERS ONLY TO PREFABRICATED PANEL FORMS AND NOT TO "BUILT-IN-PLACE" FORMS. THE EXPLANATION OFFERED, WHICH WE ACCEPT, IS THAT "BUILT-IN-PLACE" FORMS ARE REDUCED TO MATERIAL. ALTHOUGH SOME OF THE MATERIAL MAY BE REUSED, THE FORMS IN THEIR ERECTED STATE ARE NOT REUSABLE.

16. DESPITE THE AUGUST 30, 1968 MEMORANDUM, THE RIVALRY BETWEEN THE LABOURERS AND CARPENTERS TO DO AS MUCH OF THE STRIPPING OF FORMS AS POSSIBLE CONTINUED UNABATED. EFFORTS ON THE PART OF THE HYDRO OFFICIALS ON THE PROJECT TO GET THE TWO UNIONS TO WORK OUT A SETTLEMENT ALL PROVED TO BE ABORTIVE. THE DISPUTE BECAME PARTICULARLY INTENSE EARLY IN 1969 WHEN STRIPPING OF "BUILT-IN-PLACE" WALL FORMS COMMENCED ON REACTOR BUILDING No. 3 OF THE PROJECT. EARLY IN MARCH 1969, THE HYDRO OFFICIALS ON THE JOB MANAGED TO ARRANGE A COUPLE OF MEETINGS WITH REPRESENTATIVES OF THE TWO UNIONS WHICH RESULTED IN THE ISSUING OF A MEMORANDUM DATED MARCH 14, 1969. AFTER IT WAS RELEASED, THE CARPENTERS' REPRESENTATIVES REFUSED TO ACCEPT IT. THEY TESTIFIED THAT IT DID NOT REFLECT THEIR UNDERSTANDING OF THE AGREEMENT THAT HAD BEEN REACHED. HYDRO OFFICIALS, ON THE OTHER HAND, CLAIM THAT THE CARPENTERS' REPRESENTATIVES APPROVED A DRAFT OF THE MEMORANDUM BEFORE IT WAS RELEASED AND THAT THERE WAS A COMMON UNDERSTANDING AS TO ITS MEANING.

17. THE MARCH 14, 1969 DIRECTIVE WHICH IS SIGNED BY CROSSING AND ADDRESSED TO THE SUPERVISORY PERSONNEL ON THE PICKERING PROJECT READS IN PART:

PANEL FORMS

CARPENTERS TO RELEASE ALL PANELS. THIS INCLUDES THE REMOVAL OF ALL HARDWARE, WALERS, STRONGBACKS AND BRACES AND THEN REMOVING THE PANELS OFF THE WALL AND PLACING THEM ON THE SCAFFOLD OR ON THE FLOOR IF NO SCAFFOLDING BEING USED.

LABOURERS THEN TO LOWER TO THE FLOOR FROM THE SCAFFOLD, CLEAN OIL AND MOVE TO THE NEXT LOCATION. LABOURERS CAN WORK ON THE SCAFFOLDS TO LOWER THE MATERIALS.

NON-REUSABLE FORMWORK

HARDWARE TO BE REMOVED FROM FORMS BY CARPENTERS.

STRIPPING AND REMOVAL OF THE FORM TO BE DONE BY THE LABOURERS EXCEPT WHERE ASSISTANCE IS REQUIRED IN CUTTING OF THE MATERIAL FOR REMOVAL.

18. CROSSING AND McLELLAN TESTIFIED THAT THE MEMORANDUM OF MARCH 14, 1969 WAS INTENDED TO BE IN ACCORD WITH HYDRO'S UNDERSTANDING OF THE "MEMORANDUM ON CONCRETE FORMS" DATED OCTOBER 3, 1949. FURTHER, BOTH TESTIFIED THAT THE HEADING "NON-REUSABLE FORMWORK" REFERRED TO ALL "BUILT-IN-PLACE" FORMS. THE EXPLANATION PROFFERED IS THE SAME AS THAT GIVEN WITH RESEPECT TO THE AUGUST 30,

1968 MEMORANDUM, NAMELY THAT THE "BUILT-IN-PLACE FORMS ARE REDUCED TO MATERIAL AND ALTHOUGH THE MATERIAL OR PARTS THEREOF ARE REUSED, THE FORM IN ITS ERECTED STATE WAS NOT REUSABLE. ON THE OTHER HAND, THE PANEL FORMS ARE REUSED IN THEIR PREFABRICATED CONDITION. WHILE REPRESENTATIVES OF THE CARPENTERS WHO ATTENDED THE MEETINGS LEADING UP TO THE MARCH 14, 1969 DIRECTIVE TESTIFIED THAT THE DIRECTIVE WAS NOT THE BASIS OF SETTLEMENT AGREED UPON, NONE ACTUALLY CHALLENGED THE INTERPRETATION PLACED ON THE WORDING OF THE DIRECTIVE BY THE HYDRO OFFICIALS.

19. IN ANY EVENT, THE MARCH 14, 1969 MEMORANDUM DID NOT SETTLE THE DISPUTE BETWEEN THE LABOURERS AND CARPENTERS. HYDRO CONSEQUENTLY STOPPED ALL STRIPPING ON REACTOR BUILDING No. 3 IN THE HOPE THAT THE TWO UNIONS WOULD RESOLVE THEIR DIFFERENCES. BY EARLY MAY OF 1969, HOWEVER, IT WAS APPARENT TO HYDRO THAT ONCE AGAIN THE LABOURERS AND CARPENTERS WERE UNABLE TO WORK OUT A MUTUALLY SATISFACTORY SOLUTION. HYDRO ACCORDINGLY ADVISED THE TWO UNIONS THAT IT PROPOSED TO RECOMMEND STRIPPING ON REACTOR BUILDING No. 3 ON THE FORMER RATIO BASIS OF TWO LABOURERS TO ONE CARPENTER. THIS PROVOKED STRONG PROTESTS FROM THE CARPENTERS WHICH AGAIN PROMPTED HYDRO TO DELAY THE RESUMPTION OF STRIPPING OF THE "BUILT-IN-PLACE" FORMS ON THE REACTOR BUILDING. HYDRO ONCE MORE ENDEAVoured TO GET THE DISPUTING UNIONS TO REACH AN AGREEMENT. WHEN THIS EFFORT FAILED HYDRO ANNOUNCED THAT IT WAS GOING AHEAD WITH THE STRIPPING OF THE "BUILT-IN-PLACE" FORMS COMMENCING ON MAY 26, 1969, ON THE BASIS OF THE MARCH 14, 1969 MEMORANDUM.

20. HYDRO, IN FACT, DID START STRIPPING OPERATIONS ON MAY 26TH, AND AT NOON ON THAT DAY THE CARPENTERS REFUSED TO WORK AND WALKED OFF THE JOB. THE NIGHT SHIFT OF CARPENTERS AS WELL DID NOT REPORT FOR WORK. ON MAY 27TH, ALTHOUGH THE CARPENTERS REPORTED ON THE SITE THEY REFUSED TO WORK IN ACCORDANCE WITH HYDRO'S ASSIGNMENT. YET ANOTHER MEETING ENSUED BETWEEN HYDRO OFFICIALS AND REPRESENTATIVES OF THE TWO UNIONS AND AGAIN THE UNIONS UNDERTOOK TO WORK OUT A SOLUTION. IT WAS AGREED BY THE CARPENTERS, HOWEVER, THAT IN THE INTERIM PERIOD THEY WOULD RETURN TO WORK ON A COMPOSITE CREW BASIS, BUT THAT THE WORK DONE BY THE COMPOSITE CREWS WOULD BE CONFINED TO THE STRIPPING OF "BUILT-IN-PLACE" FORMS AND NOT PANEL FORMS. THIS TIME IT WAS THE LABOURERS WHO WERE NOT PREPARED TO COMPLY WITH THE ARRANGEMENT. ON MAY 28TH, THE CARPENTERS RETURNED TO WORK. IN LIGHT OF THE OPPOSITION OF THE LABOURERS, HOWEVER, THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS WAS DISCONTINUED. HYDRO, HOWEVER, ADVISED THE TWO UNIONS THAT THE STRIPPING OF "BUILT-IN-PLACE" FORMS WOULD RECOMMENCE IF NO AGREEMENT WAS REACHED BETWEEN THEM BY JUNE 6, 1969. ON MAY 29, 1969, THE LABOURERS FILED THE INSTANT COMPLAINT.

21. THE PRACTICE IN THE STRIPPING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS IN TORONTO AND ITS IMMEDIATE ENVIRONS IS DECIDEDLY MIXED. THERE ARE SIGNIFICANT AND DIRECT CONFLICTS BETWEEN THE TESTIMONY OF SUPERVISORY PERSONNEL OF COMPANIES DOING FORMING WORK IN THE TORONTO AREA AND THE TESTIMONY OF BUSINESS REPRESENTATIVES OF THE CARPENTERS. A PRIME EXAMPLE IS THE CONTRADICTIONARY EVIDENCE RELATING TO THE STRIPPING OF FORMS ON BUILDINGS CONSTRUCTED AT YORK UNIVERSITY. IT IS CLEAR FROM ALL OF THE EVIDENCE, HOWEVER, THAT THE DISPUTE BETWEEN THE LABOURERS AND CARPENTERS OVER THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS HAS BECOME INCREASINGLY SERIOUS THROUGHOUT THE 1960's. IN DECEMBER OF 1965, INTERNATIONAL REPRESENTATIVES OF THE TWO UNIONS TRIED TO SETTLE THE ISSUE AND SIGNED A MEMORANDUM DATED DECEMBER 22, 1965. THIS MEMORANDUM ASSIGNED THE TYPE OF WORK IN DISPUTE TO CARPENTERS. AS WAS NOTED, HOWEVER, IN THE FRASER-BRACE ENGINEERING COMPANY LIMITED CASE (SUPRA) THE FACT THAT NO CONTRACTORS WERE PARTIES TO THE AGREEMENT DETRACTS FROM ITS VALUE. MOREOVER, IT APPEARS THAT IT WAS NOT ACCEPTED OR ADHERED TO BY EITHER THE LABOURERS OR BY MANY CONTRACTORS IN THE TORONTO AREA. RATHER, THE DISPUTE HAS CONTINUED WITH GROWING INTENSITY IN THE SUCCEEDING YEARS TO THE PRESENT.

22. WHILE THERE ARE MANY CONFLICTS IN THE TESTIMONY OF WITNESSES CALLED BY THE LABOURERS AND CARPENTERS, THE EVIDENCE DOES SUGGEST THAT IN THE TORONTO AREA DURING THE 1950's, WHILE A SUBSTANTIAL PERCENTAGE OF WALL FORMS BEING USED WERE OF THE "BUILT-IN-PLACE" VARIETY THAT THE WORK OF STRIPPING THEM WAS ASSIGNED BY CONTRACTORS TO THE LABOURERS WITH RELATIVELY FEW OBJECTIONS ON THE PART OF THE CARPENTERS. IT APPEARS THAT IT WAS ONLY IN THE 1960's, AT A TIME WHEN PREFABRICATED WOOD AND STEEL FORMS WERE MORE COMMONLY USED, THAT THE CARPENTERS STRONGLY SOUGHT TO ASSERT THEIR JURISDICTION OVER THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS. DURING THIS LATTER PERIOD IT WOULD SEEM FROM THE EVIDENCE THAT CONTRACTORS OFTEN ORIGINALLY ASSIGNED THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS TO LABOURERS BUT HAVE BEEN PREVAILED UPON BY BUSINESS AGENTS OF THE CARPENTERS TO CHANGE THE ASSIGNMENT TO CARPENTERS. AS A COMPROMISE, WHICH WE NOTED ON HYDRO PROJECTS, CONTRACTORS HAVE ASSIGNED THE WORK TO COMPOSITE CREWS. AS WELL, SOME CONTRACTORS, ON OCCASION, USED WHICHEVER TRADE WAS NOT OTHERWISE OCCUPIED TO DO THE WORK. IT IS A FAIR STATEMENT, HOWEVER, TO SAY THAT LEFT TO THEIR OWN DEVICES, FORMING CONTRACTORS, BY AND LARGE, BY PREFERENCE, WOULD ASSIGN THE WORK OF STRIPPING "BUILT-IN-PLACE" WALL FORMS TO LABOURERS. AN EXCEPTION TO THIS GENERALIZATION IS WHERE AN ARCHITECTURAL WALL IS BEING ERECTED IN WHICH CASE SOME CONTRACTORS WOULD OPT TO USE CARPENTERS TO REMOVE THE PLYWOOD SHEETING FROM THE FACE OF THE WALL. ALSO, IT WOULD APPEAR THAT AT LEAST A FEW CONTRACTORS WOULD PREFER TO USE CARPENTERS TO DISMANTLE SPECIALLY CONSTRUCTED BUILT-IN-PLACE FORMS DESIGNED FOR UNUSUAL FEATURES IN A WALL, WHEN THE FORM IS TO BE REUSED.

23. THE CARPENTERS, IN SUPPORT OF THEIR CLAIM TO THE WORK IN DISPUTE, FILED A NUMBER OF DECISIONS OF THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES WHICH WERE ISSUED IN 1968 AND 1969. WHILE MOST OF THEM PERTAIN TO THE STRIPPING OF "BUILT-IN-PLACE" FORMS ON PROJECTS LOCATED IN THE UNITED STATES, TWO RELATE TO PROJECTS IN TORONTO, NAMELY THE CENTENNIAL CENTRE FOR THE PERFORMING ARTS AND THE ADDITION TO THE HOSPITAL FOR SICK CHILDREN. IN ALL CASES, INCLUDING THE TORONTO PROJECTS, THE JOINT BOARD ASSIGNED THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS, USING 2' X 8' OR 4' X 8' PIECES OF PLYWOOD AS THE FACING MATERIAL, TO THE CARPENTERS. MORE SPECIFICALLY, THE JOINT BOARD ASSIGNED THE RELEASING AND REMOVAL OF PLYWOOD WALL FORMS TO BE REUSED, INCLUDING THE REMOVAL OF HARDWARE, WALERS AND BRACING, TO THE CARPENTERS.

24. NO EVIDENCE WAS ADDUCED WHICH IN ANY WAY ALTERS OUR VIEWS WITH RESPECT TO THE FACTORS OF SKILL, EFFICIENCY AND ECONOMY IN THE STRIPPING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS, AS EXPRESSED IN OUR DECISION IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED CASE (SUPRA). THAT IS TO SAY, NO CARPENTERS' SKILLS ARE REQUIRED TO DISMANTLE THE FORMS IN QUESTION. ANY SKILLS THAT ARE NEEDED CAN AS EASILY BE ACQUIRED BY LABOURERS AS CARPENTERS FROM EXPERIENCE ON THE JOB. FURTHER, WE ARE SATISFIED THAT THE WORK FORCE OF A FORMING CONTRACTOR CAN BE MORE EFFICIENTLY AND PRODUCTIVELY UTILIZED BY HAVING CARPENTERS ERECT "BUILT-IN-PLACE" PLYWOOD WALL FORMS, A JOB REQUIRING CARPENTERS' SKILLS, AND USING LABOURERS TO DISMANTLE THE FORMS. FINALLY, HAVING REGARD TO THE WAGE DIFFERENTIAL BETWEEN LABOURERS AND CARPENTERS, THE USE OF LABOURERS TO DISMANTLE THE FORMS IS MORE ECONOMICAL FROM THE POINT OF VIEW OF COST.

25. THE EVIDENCE AS TO WHAT HAS TRANSPIRED WITH RESPECT TO THE STRIPPING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS ON THE PICKERING PROJECT IS OF NO GUIDANCE TO THE BOARD IN MAKING A DETERMINATION OF THE COMPLAINT BEFORE US. THE PICKERING PROJECT EXPERIENCE ONLY SERVES TO UNDERSCORE THE INTRACTABLE NATURE OF THE STRUGGLE THAT CONTINUES TO EXIST BETWEEN THE LABOURERS AND THE CARPENTERS OVER THE WORK IN DISPUTE. THE EVIDENCE RELATING TO THE ASSIGNMENT OF THE DISPUTED WORK ON OTHER HYDRO PROJECTS AND CONSTRUCTION PROJECTS IN THE TORONTO AREA ALSO SERVES TO ILLUSTRATE THE SAME POINT.

26. IT WOULD APPEAR, HOWEVER, THAT HYDRO HAS GENERALLY ASSIGNED THE RELEASING OF THE HARDWARE USED ON "BUILT-IN-PLACE" PLYWOOD WALL FORMS TO THE CARPENTERS. IN ADDITION IT WOULD SEEM THAT THE CARPENTERS ON OCCASION HAVE BEEN PERMITTED TO REMOVE THE WALERS THAT COME LOOSE WHEN THE HARDWARE IS REMOVED AND SOMETIMES THEY HAVE BEEN ASSIGNED TO RELEASE THE PLYWOOD FROM THE

CONCRETE FACE OF THE WALL. WE ARE SATISFIED, NEVERTHELESS, THAT THE GENERAL POLICY OF HYDRO WHICH IT HAS FOLLOWED WITH SOME MEASURE OF CONSISTENCY HAS BEEN TO ASSIGN THE ENTIRE DISMANTLING OF "BUILT-IN-PLACE" PLYWOOD WALL FORMS, WITH THE EXCEPTION OF THE HARDWARE, TO THE LABOURERS. CERTAINLY THERE HAVE BEEN MANY DEPARTURES FROM THE POLICY AND PRACTICE. THESE DEPARTURES, HOWEVER, APPEAR TO BE THE RESULT OF EXIGENCIES AND SPECIAL CONDITIONS BROUGHT ABOUT BY THE ACTIVITIES OF THE BUSINESS AGENTS AND REPRESENTATIVES OF THE TWO RIVAL UNIONS. THE PREFERENCE OF HYDRO, HOWEVER, IS TO ASSIGN THE DISPUTED WORK TO LABOURERS. WHILE EMPLOYER PREFERENCE IS NOT A DETERMINING FACTOR, IT IS ONE TO BE TAKEN INTO ACCOUNT (SEE 175 NLRB No. 96 - 1969 CCH NLRB 26,243).

27. THE PREFERENCE OF LABOURERS OVER CARPENTERS TO STRIP "BUILT-IN-PLACE" PLYWOOD WALL FORMS IS ALSO GENERALLY TRUE OF CONTRACTORS WHO DO FORMING WORK IN THE TORONTO AREA. HOWEVER, AS FAR AS ACTUAL PAST PRACTICE IS CONCERNED IN TORONTO WITH REGARD TO THE WORK IN DISPUTE, IT HAS BEEN HIGHLY VARIED AND DOES NOT LEND ANY REAL SUPPORT TO THE JURISDICTIONAL CLAIMS OF EITHER THE LABOURERS OR THE CARPENTERS.

28. WITH REFERENCE TO THE NATIONAL JOINT BOARD, NOT ONLY THE RECENT DECISIONS TO WHICH WE WERE REFERRED BUT ALSO ITS MANY EARLIER DECISIONS ON THE WORK IN DISPUTE, THE JOINT BOARD HAS ALMOST INVARIABLY ASSIGNED THE STRIPPING OF REUSABLE "BUILT-IN-PLACE" WALL FORMS TO CARPENTERS. WE WOULD POINT OUT, HOWEVER, THAT THE JOINT BOARD HAS NOT GIVEN ANY REASONS TO SUPPORT THESE ASSIGNMENTS OTHER THAN STATING THAT THE WORK IN DISPUTE "IS GOVERNED BY THE MEMORANDUM OF UNDERSTANDING OF OCTOBER 3, 1949". THIS LATTER DOCUMENT HAS BEEN ESSENTIALLY DISCREDITED AS A RESULT OF WHAT WOULD APPEAR TO BE A COMPLETE LACK OF AGREEMENT OR UNDERSTANDING AS TO ITS MEANING OR INTERPRETATION BY EMPLOYERS, LABOURERS AND CARPENTERS ALIKE GOING BACK TO ITS VERY INCEPTION. FOR THESE REASONS, WE FIND THE ADJUDICATIONS OF THE JOINT BOARD IN THIS MATTER, AT BEST, OF PERIPHERAL VALUE (SEE 177 NLRB No. 36 - 1969 CCH NLRB 26, 803; 177 NLRB No. 90 - 1969 CCH NLRB 26, 855).

29. THERE IS NO QUESTION THAT THE FACTORS OF SKILL, EFFICIENCY AND ECONOMY ENHANCE THE JURISDICTIONAL CLAIM OF THE LABOURERS OVER THE CARPENTERS.

30. HAVING CONSIDERED ALL OF THE EVIDENCE, WE ARE NOT PERSUADED TO DEPART IN ANY ESSENTIAL RESPECT FROM OUR EARLIER DIRECTION, INVOLVING THE SAME DISPUTE, IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED CASE. WE WOULD MENTION, HOWEVER, THAT WHILE WE DO NOT FEEL CALLED UPON IN THE INSTANT COMPLAINT TO MAKE A DIRECTION CONCERNING THE STRIPPING OF FORMS ON ARCHITECTURAL WALLS OR IN THE CASE OF SPECIALLY CONSTRUCTED REUSABLE BUILT-IN-PLACE FORMS FOR UNUSUAL FEATURES IN A WALL, IT IS OUR VIEW AT THIS TIME THAT THE ASSIGNMENT AS BETWEEN LABOURERS AND CARPENTERS SHOULD BE AT THE DISCRETION OF THE EMPLOYER.

31. THE BOARD ACCORDINGLY DIRECTS THAT THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO MAKE THE FOLLOWING WORK ASSIGNMENT WITH REGARD TO THE DISMANTLING OF THE "BUILT-IN-PLACE" WALL FORMS BEING USED ON ITS PICKERING GENERATING STATION PROJECT:

1. THE RELEASING OF ALL HARDWARE, THE CUTTING OF MATERIAL, AND THE REMOVAL OF THE PLYWOOD SHEETING FROM THE CONCRETE SURFACE OF THE WALL SHALL BE ASSIGNED TO MEMBERS OF THE RESPONDENT CARPENTERS' UNIONS.
2. THE DISMANTLING OF THE REMAINDER OF THE FORMS SHALL BE ASSIGNED TO MEMBERS OF THE COMPLAINANT LABOURERS' UNION.

DECISION OF BOARD MEMBER R. W. TEAGLE: NOVEMBER 27, 1969.

I DISSENT.

HAVING CONSIDERED ALL OF THE EVIDENCE IN THE INSTANT COMPLAINT, I FIND NO REASON TO DEPART FROM MY DISSENTING DECISION IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED CASE. ACCORDINGLY, FOR THE REASONS GIVEN IN MY DECISION IN THAT CASE, I WOULD ASSIGN THE DISMANTLING OF ALL BUILT-IN-PLACE WALL FORMS ON THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO PICKERING GENERATING STATION PROJECT TO THE LABOURERS.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

16881-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) v. PRESCON OF CANADA LTD. (RESPONDENT).

5. THE APPLICANT HAS APPLIED FOR AN ALL EMPLOYEE UNIT. IT WOULD APPEAR THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE ENGAGED IN POST-TENSIONING WORK. THE RESPONDENT HAS OTHER EMPLOYEES ENGAGED IN MANUFACTURING OPERATIONS. HOWEVER, IT WOULD APPEAR THAT THE APPLICANT IS NOT SEEKING TO INCLUDE THESE EMPLOYEES. IN THOSE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO GRANT A BARGAINING UNIT DESCRIBED IN TERMS OF ALL EMPLOYEES. AFTER CAREFULLY CONSIDERING THE MATTER, THE BOARD IS SATISFIED THAT THE WORK BEING PERFORMED BY THE EMPLOYEES IN QUESTION IS CLOSELY AKIN TO THAT NORMALLY PERFORMED BY REINFORCING RODMEN. HAVING REGARD TO THE FOREGOING CONSIDERATIONS, THE BOARD FURTHER FINDS THAT ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO,

SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(NOVEMBER 21, 1969).

16912-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. P. M. BOURKE LIMITED (RESPONDENT).

THE APPLICATION PORTION OF ONE OF THE APPLICATIONS FOR MEMBERSHIP DOES NOT BEAR THE SIGNATURE OF THE PERSON PURPORTEDLY APPLYING FOR MEMBERSHIP IN THE APPLICANT ALTHOUGH THE SIGNATURE OF THE PERSON CONCERNED DOES APPEAR ON THE RECEIPT PORTION OF THE COMBINATION APPLICATION. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

3. ONE OF THE REQUIREMENTS OF THE BOARD AS SET OUT IN ITS STATEMENTS OF POLICY WITH REGARD TO MEMBERSHIP (SEE BOARD'S POLICY STATEMENT DATED FEBRUARY 16, 1951 WHICH WAS CONFIRMED ON AUGUST 29, 1967, IN THE METROPOLITAN LIFE INSURANCE CASE, OLRB M.R. AUG. 1967 P. 437) IS THAT THERE IS EVIDENCE BEFORE THE BOARD THAT A PERSON ON WHOSE BEHALF EVIDENCE OF MEMBERSHIP IS SUBMITTED HAS APPLIED FOR MEMBERSHIP IN THE APPLICANT TRADE UNION. THIS REQUIREMENT HAS NOT BEEN MET IN THE CASE OF ONE OF THE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPT FILED BY THE APPLICANT. THE BOARD ACCORDINGLY FINDS THAT THE APPLICATION IN QUESTION DOES NOT MEET THE BOARD'S STANDARDS.

DECISION OF BOARD MEMBER E. BOYER:

I DISSENT. I WOULD HAVE ACCEPTED THE APPLICATION FOR MEMBERSHIP, WHERE THE APPLICANT FAILED TO AFFIX HIS SIGNATURE TO THE APPLICATION PORTION OF THE COMBINATION APPLICATION FOR MEMBERSHIP RECEIPT SINCE THE SIGNATURE OF THE APPLICANT APPEARS ON THE ATTACHED RECEIPT PORTION. IN MY VIEW HIS SIGNATURE ON THE RECEIPT INDICATING THE PAYMENT OF AN INITIATION FEE IS SUFFICIENT TO SHOW THAT HE HAD APPLIED FOR MEMBERSHIP IN THE APPLICANT, NOTWITHSTANDING THE ABSENCE OF HIS SIGNATURE ON THE APPLICATION PORTION OF THE CARD.

(NOVEMBER 14, 1969).

17001-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. M. P. LUNDY CONSTRUCTION LIMITED (RESPONDENT).

5. THE MATTERS RAISED IN PARAGRAPH 14(2) OF THE REPLY ARE NOT MATERIAL TO THE APPLICATION. IT IS THE POLICY OF THE BOARD TO INCLUDE IN A CONSTRUCTION INDUSTRY BARGAINING UNIT EMPLOYEES WHO ARE NOT REGARDED AS PERMANENT EMPLOYEES. AGAIN IN CONSTRUCTION INDUSTRY CASES FOR THE PURPOSES OF MAKING A COUNT, THE BOARD INCLUDES ALL PERSONS IN THE BARGAINING UNIT WHO WERE AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION.

(NOVEMBER 27, 1969).

CEMBER, 1969



ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER 1969

BARGAINING AGENTS CERTIFIED DURING DECEMBER

NO VOTE CONDUCTED

15719-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. PARAGON TOOLS COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (105 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1051).

16634-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE PERTH COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THOSE PERSONS WHO WORK FOR THE RESPONDENT UNDER A CONTRACT OF SERVICE OR CONTRACT FOR SERVICE, WHETHER SUCH CONTRACT BE ORAL OR WRITTEN, ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE).

16649-69-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 AFFILIATED WITH THE S.E.I.U. A F OF L, C.I.O. & C.L.C. (APPLICANT) V. ST. JOSEPH'S GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION 865 (INTERVENER).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, MEMBERS OF THE CONGREGATION OF SISTERS OF ST. JOSEPH OF SAULT STE. MARIE, CONFIDENTIAL SECRETARY TO THE ADMINISTRATOR, SECRETARY AND CLERK EMPLOYED IN A CONFIDENTIAL CAPACITY IN OFFICE OF PERSONNEL

DIRECTOR, CONFIDENTIAL SECRETARY TO MEDICAL DIRECTOR, CONFIDENTIAL SECRETARY TO DIRECTOR OF NURSING, CONFIDENTIAL PAYROLL CLERK, PAY-ROLL OFFICER, PERSONS EMPLOYED ON A TEMPORARY OR CASUAL BASIS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE WORK-STUDY PROGRAMME." (48 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE INCUMBENTS OF THE CLASSIFICATIONS SET OUT BELOW EXERCISE MANAGERIAL FUNCTIONS AND ARE EXCLUDED FROM THE BARGAINING UNIT ON THE BASIS OF BEING SUPERVISORS OR PERSONS ABOVE THE RANK OF SUPERVISOR, HEAD LIBRARIAN, ADMITTING OFFICER, CREDIT OFFICER, CONFIDENTIAL SECRETARY TO RADIO-LOGIST, STORE KEEPER, CONFIDENTIAL SECRETARY TO MEDICAL DIRECTOR OF REHABILITATION).

16699-69-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADIAN SILK MANUFACTURING CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1065).

16740-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. POLYRESINS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES)

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE LABORATORY STAFF ARE NOT INCLUDED IN THE BARGAINING UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1066).

16774-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE LEEDS AND GRENVILLE COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT AREA SERVICE OFFICERS, PERSONS ABOVE THE RANK OF AREA SERVICE OFFICER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (86 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

(APPLICANT CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, ENGAGED IN MAINTENANCE, SERVICE AND PLANT OPERATIONS, SAVE AND EXCEPT AREA SERVICE OFFICER." (27 EMPLOYEES IN THE UNIT).

(APPLICATION DISMISSED).

16811-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. AUDIO TRANSFORMER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN THE CITY OF WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (172 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 1077).

16903-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. NAVCO FOOD SERVICES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF PRESTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

16956-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, (APPLICANT) V. UNION CARBIDE CANADA LIMITED, GAS PRODUCTS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (45 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

(FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES

(A) THAT THE FOLLOWING PERSONS ARE INCLUDED IN THE BARGAINING UNIT:

LEADER (PLANT, REPAIRMAN LEADER
(DRIOX DEPARTMENT), REPAIRMAN
LEADER (GARAGE), AND EMPLOYEES IN
THE SPECIALTY GASES DEPARTMENT.

(B) THAT TECHNICIANS IN THE SPECIALTY GASES
DEPARTMENT BE EXCLUDED FROM THE BARGAINING
UNIT.).

16974-69-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL
268, A.F. OF L., C.I.O. & C.L.C. (APPLICANT) V. DAWSON COURT
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND
EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR
AND FOREMAN, OFFICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (94 EMPLOYEES IN THE UNIT).

16980-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL -
JEWELRY WORKERS UNION (APPLICANT) V. M. Z. M. LABORATORY LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL DENTAL TECHNICIANS IN THE EMPLOY OF THE RESPONDENT IN
METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE
RANK OF FOREMAN." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 1091).

16981-69-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS
INTERNATIONAL UNION. RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES
UNION. LOCAL 254 (APPLICANT) V. VERSAFOOD SERVICES LIMITED
HERITAGE RESTAURANTS DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE ONTARIO SCIENCE
CENTRE IN METROPOLITAN TORONTO, SAVE AND EXCEPT MANAGER, ASSISTANT
MANAGER, EXECUTIVE CHEFS, THE SOUS CHEFS, MAITRE D'S, ASSISTANT
MAITRE D'S, CAFETERIA MANAGER, CAFETERIA SUPERVISORS, OFFICE STAFF,
PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16987-69-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE WATERLOO COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (66 EMPLOYEES IN THE UNIT).

16994-69-R: THE CANADIAN UNION OF BASE METAL WORKERS (C.N.T.U.) (APPLICANT) V. NORANDA MINES LIMITED (GECO DIVISION) (RESPONDENT).

UNIT: "ALL STATIONERY ENGINEERS AND COMPRESSOR OPERATORS EMPLOYED IN THE BOILER HOUSE AND POWER HOUSE OF THE RESPONDENT AT MANITOUWADGE, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16995-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT ST. CATHARINES, REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (102 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16996-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT WELLAND, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (39 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16998-69-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. HENRY'S FASHIONS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT OWNER MANAGER AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

17003-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. C M WINDOWS LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

17019-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. FILIPOWICH MASONARY CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

17023-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. METRO (WINDSOR) CATERING COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED MAY 12, 1969." (21 EMPLOYEES IN THE UNIT).

17024-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. ARDEM CONSTRUCTION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS AND SHOP AND YARD EMPLOYEES." (5 EMPLOYEES IN THE UNIT).

17028-69-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. JOHN KLAASSEN GAS PLUMBING & HEATING (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF

ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO SECTION 6(1) OF THE LABOUR RELATIONS ACT)

(THE APPLICANT HAS APPLIED FOR A BARGAINING UNIT OF PLUMBERS AND PLUMBERS'S APPRENTICES. IT APPEARS FROM THE MATERIAL FILED BY THE RESPONDENT THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE RESPONDENT EMPLOYED ONLY PLUMBERS AND PLUMBERS' APPRENTICES.).

17029-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. LEONARD G. WEBER CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

17032-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SKRYPEK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (4 EMPLOYEES IN THE UNIT).

17033-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) V. PAUL DAIGNAULT INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17034-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. LEONARD G. WEBER CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17043-69-R: NIAGARA PENINSULA PRINTING PRESSMEN AND ASSISTANTS' UNION No. 425, SUBORDINATE TO THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. LINCOLN GRAPHICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

17048-69-R: LOCAL UNION No. 773, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND FIELD SALESMEN." (12 EMPLOYEES IN THE UNIT).

17053-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. KEEL RECORD MANUFACTURING OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

17054-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RIG-FAB STEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (19 EMPLOYEES IN THE UNIT).

17055-69-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CHARLES HUFFMAN LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

17058-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ROBERTSON-IRWIN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE WORDS "SIMILAR EQUIPMENT" INCLUDES HOISTS.).

(SEE INDEXED ENDORSEMENT PAGE 1097).

17105-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. P. M. BOURKE CO. LTD. (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING." (16 EMPLOYEES IN THE UNIT).

(FOR THE PURPOSES OF CLARITY THE BOARD NOTED THAT THE WORD "TRUCK" INCLUDES "ROCK BUGGY" AND "ROCK WAGON".).

17107-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. OMEGA INVESTMENTS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

17108-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION No. 597 (APPLICANT) V. COLORSPAN BUILDINGS (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

17120-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE FOUNDATION COMPANY OF CANADA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

16971-69-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT)
V. HOTEL DIEU HOSPITAL ST. CATHARINES (RESPONDENT) V. INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS
THEIR HELPERS, EMPLOYED IN THE OPERATION OF THE HEATING AND
REFRIGERATION EQUIPMENT OF THE RESPONDENT AT ITS HOSPITAL AT ST.
CATHARINES, SAVE AND EXCEPT THE CHIEF ENGINEER AND THE ASSISTANT
CHIEF ENGINEER." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		9
NUMBER OF PERSONS WHO CAST BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

16253-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT)
V. M. LOEB (LONDON) LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT
LONDON, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF
STORE MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT
MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN
LONDON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND
STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND
EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER,
OFFICE STAFF, AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE
AGREEMENT BETWEEN M. LOEB (LONDON) LIMITED AND INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		14
NUMBER OF PERSONS WHO CAST BALLOTS	14	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

16777-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. F. W. FEARMAN COMPANY LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS AND ITS LOCAL 108 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN ITS POWER PLANT AT BURLINGTON, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

16892-69-R: PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY (AN AFFILIATE OF THE PATTERN MAKERS' LEAGUE OF N.A.) (APPLICANT) V. BEAVER PATTERNS (RESPONDENT).

UNIT: "ALL JOURNEYMEN PATTERNMAKERS AND PATTERNMAKER APPRENTICES EMPLOYED BY THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

16912-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. P. M. BOURKE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS OF THE TIMMINS FEDERAL BUILDING ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (24 EMPLOYEES IN THE UNIT).

(FOR PURPOSES OF CLARITY THE BOARD NOTED THAT THE APPLICANT AGREES THAT END DUMP ROCK-WAGON OPERATORS AND OFF HIGHWAY TRUCK DRIVERS ARE NOT INCLUDED IN THE BARGAINING UNIT.).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	24
NUMBER OF PERSONS WHO CAST BALLOTS	24
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24

NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

NO VOTE CONDUCTED

15636-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. TRW ELECTRONIC COMPONENTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (246 EMPLOYEES).

16307-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. D. ESSON PLUMBING AND HEATING LIMITED (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 508 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (INTERVENER #2). (9 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1119).

16803-69-R: GENERAL TRUCK DRIVERS LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PETERBOROUGH FREIGHT LINES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (16 EMPLOYEES).

16933-69-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. GLOBE MILLS LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC, LOCAL 1125 (INTERVENER). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1090).

17002-69-R: ATLANTIC PACKAGING COMPANY EMPLOYEES' ASSOCIATION (APPLICANT) V. ATLANTIC PACKAGING COMPANY (RESPONDENT) V. PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #2). (30 EMPLOYEES).

17018-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. WINCHESTER CONST. CO. LTD. (RESPONDENT). (3 EMPLOYEES).

17020-69-R: LONDON OPERATORS' AND LABOURERS' UNION (APPLICANT) V. FRAMAT CONSTRUCTION LIMITED (RESPONDENT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 1059 (INTERVENER). (30 EMPLOYEES).

17030-69-R: OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, AFL-CIO-CLC, LOCAL 343 (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1095).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

16417-69-R: BOOT AND SHOE WORKERS' UNION AFFILIATED WITH THE CANADIAN LABOUR CONGRESS AND A.F.L.-C.I.O. (APPLICANT) V. WRAGGE SHOES LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT SEAFORTH, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (142 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	124
NUMBER OF PERSONS WHO CAST BALLOTS	123
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	34
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	89

16856-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. MICRODENT LABORATORIES LTD. (RESPONDENT).

UNIT: "ALL DENTAL TECHNICIANS EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	12
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	9

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

16970-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PILEN CONSTRUCTION CO. LTD. (RESPONDENT). (5 EMPLOYEES).

17006-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. BRAMALEA GENERAL CONTRACTING (PEEL) LIMITED (RESPONDENT). (20 EMPLOYEES).

17026-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. NOR-ONT INSULATIONS (RESPONDENT). (3 EMPLOYEES).

17035-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ST. LEON CO-OP (RESPONDENT). (3 EMPLOYEES).

17038-69-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #397 (APPLICANT) V. COLORSPAN BUILDINGS (RESPONDENT). (4 EMPLOYEES).

17047-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. SUNSHINE UNIFORM SUPPLY COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER). (3 EMPLOYEES).

17056-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) V. THE BOARD OF GOVERNORS, CARLETON UNIVERSITY (RESPONDENT).

17085-69-R: THE OPERATIVE PLASTERERS' AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF OTTAWA-HULL, LOCAL UNION NO. 124 (UNITED STATES & CANADA) (APPLICANT) V. ROLAND FRECHETTE INC. (RESPONDENT). (11 EMPLOYEES).

17096-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. COASTAL STEEL CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

17101-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 (APPLICANT) V. LORD AND BURNHAM CO LTD (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING DECEMBER

16847-69-R: CHARLES FLONDER (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. (RESPONDENT) V. REGAL HOTEL (HAMILTON) LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL EMPLOYEES OF REGAL HOTEL (HAMILTON) LIMITED AT HAMILTON, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	7

16879-69-R: ANOTOLY ORLOWSKY (APPLICANT) V. LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 (RESPONDENT) V. PARISIAN FABRIC CARE SERVICES LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL EMPLOYEES OF PARISIAN FABRIC CARE SERVICES LIMITED AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND ROUTE DRIVERS." (54 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	43
NUMBER OF PERSONS WHO CAST BALLOTS	43
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
RESPONDENT	4
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	39

16920-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562, CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION NO. 1 (RESPONDENTS) V. TORONTO FORMING (1965) LIMITED (INTERVENER). (60 EMPLOYEES). (DISMISSED).

16921-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. CANADIAN CONCRETE FORMING UNION NO. 1 (RESPONDENT) V. TORONTO FORMING (1965) LTD. (INTERVENER). (GRANTED).

16922-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. CANADIAN CONCRETE FORMING UNION NO. 1 (RESPONDENT) V. DI LORENZO CONSTRUCTION CO. (INTERVENER). (DISMISSED).

16923-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. CANADIAN CONCRETE FORMING UNION NO. 1 (RESPONDENT) V. N. DI LORENZO CONSTRUCTION CO. LTD. (INTERVENER). (GRANTED). (269 EMPLOYEES).

16924-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS) V. DILCRANE EQUIPMENT LIMITED (INTERVENER).
(DISMISSED).

16925-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) V. DILCRANE
EQUIPMENT LTD. (INTERVENER). (DISMISSED).

16926-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS) V. HAMILTON FORMING LTD. (INTERVENER). (DISMISSED).

16927-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) V. HAMILTON
FORMING LTD. (INTERVENER).

16928-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS) V. DILCON CONSTRUCTION LIMITED (INTERVENER).
(DISMISSED).

16929-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) V. DILCON
CONSTRUCTION CO. LIMITED (INTERVENER). (GRANTED).

16934-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) V. REGIS
CONCRETE FORMING LIMITED (INTERVENER). (GRANTED).

16935-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS) V. REGIS CONCRETE FORMING LIMITED (INTERVENER).
(DISMISSED).

16936-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS) V. ACU FORMING LIMITED (INTERVENER). (DISMISSED).

16937-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) V. ACU
FORMING LIMITED (INTERVENER). (GRANTED).

16938-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V.
CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) (GRANTED).
(RE: RELLI FORMS LIMITED).

16939-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS) V. RELI FORMS LIMITED (INTERVENER). (DISMISSED).

16940-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS). (DISMISSED).

(RE: FAGA FORMS).

16941-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT). (DISMISSED).

(RE: FAGA FORMS).

16942-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT). (GRANTED).

(RE: FALCON STRUCTURAL FORMING LIMITED).

16943-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS). (DISMISSED).

(RE: FALCON FORMING).

16944-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT). (DISMISSED).

(RE: FALCON FORMING).

16945-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT). (DISMISSED).

(RE: DI MIRO FORMING).

16946-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) V. ETOBICOKE
FORMING (INTERVENER). (GRANTED).

16947-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION No. 1
(RESPONDENTS). (DISMISSED).

(RE: ETOBICOKE FORMING).

16948-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. CANADIAN CONCRETE FORMING UNION NO. 1 (RESPONDENT). (GRANTED).

(RE: TRIPLE F FORMING LIMITED).

16949-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT)
V. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562,
CONCRETE FORMING DIVISION AND CANADIAN CONCRETE FORMING UNION NO. 1
(RESPONDENTS). (DISMISSED).

(RE: TRIPLE F. FORMING LIMITED).

(FOR THE CASES FILE NO.S 16920-69-R - 16949-69-R
SEE INDEXED ENDORSEMENT PAGE 1122).

16965-69-R: JOE MOUSSALLEM AND ROBERTO VISSANI (APPLICANTS) V.
UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (RESPONDENT)
V. BENCO TELEVISION ASSOCIATES, A DIVISION OF REDIFON (CANADA)
LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF BENCO TELEVISION ASSOCIATES, A DIVISION
OF REDIFON (CANADA) LIMITED AT METROPOLITAN TORONTO, SAVE AND EXCEPT
FOREMEN PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		31
NUMBER OF PERSONS WHO CAST BALLOTS	31	
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	16	
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	15	

17049-69-R: HAROLD GRAHAM AND EMPLOYEES OF D. VALENTINI GENERAL
TRUCKING (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT).
(DISMISSED). (16 EMPLOYEES).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

DECEMBER

16792-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL
UNION 506 (APPLICANT) &, SMITH MONUMENT COMPANY LIMITED (RESPONDENT)
&, UNITED GRANITE WORKERS UNION, LOCAL 11, C.L.C. (PREDECESSOR TRADE
UNION). (GRANTED).

16842-69-R: LOCAL 212 NATIONAL COUNCIL OF CANADIAN LABOUR
(APPLICANT) AND, SPARTON OF CANADA LIMITED (RESPONDENT).
(GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1133).

16882-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) AND, DOMINION STORES LIMITED (RESPONDENT)
AND, THE SUDBURY GENERAL WORKERS' UNION, LOCAL 101 C.L.C.
(PREDECESSOR TRADE UNION). (GRANTED).

16883-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO: CLC (APPLICANT) AND, DOMINION STORES LIMITED (RESPONDENT) AND,
THE SUDBURY GENERAL WORKERS' UNION, LOCAL 101, C.L.C. (PREDECESSOR
TRADE UNION). (GRANTED).

16884-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) AND, WESTON BAKERIES LIMITED (RESPONDENT) AND,
THE SUDBURY GENERAL WORKERS' UNION, LOCAL 101, C.L.C. (PREDECESSOR
TRADE UNION). (GRANTED).

16885-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) AND, THE SUDBURY PRODUCER AND CONSUMER CO-
OPERATIVE DAIRY LTD. SUDBURY, ONTARIO (RESPONDENT) AND THE SUDBURY
GENERAL WORKERS UNION, LOCAL 101, C.L.C. (PREDECESSOR TRADE UNION).
(GRANTED).

16886-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) AND, PALM DAIRIES LIMITED, SUDBURY, ONTARIO
(RESPONDENT) AND, THE SUDBURY GENERAL WORKERS UNION, LOCAL 101,
C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

16887-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION,
AFL:CIO:CLC (APPLICANT) AND, STANDARD DAIRY LIMITED SUDBURY,
ONTARIO (RESPONDENT) AND, THE SUDBURY GENERAL WORKERS UNION,
LOCAL 101, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

16478-69-U: BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF
AMERICA, LOCAL 415 (APPLICANT) V. GORMAN ECKERT AND COMPANY LIMITED
(RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1135).

16534-69-U: NADECO LIMITED (APPLICANT) V. CLIFFORD PILKEY, M.P.P.,
DONALD URQUHART, WILLIAM FAIRSERVICE, FRED BECKSTEAD (RESPONDENTS).
(WITHDRAWN).

16766-69-U: INDUSTRIAL LATHING & PLASTERING COMPANY LIMITED
(APPLICANT) V. ANTONIO VECCHIARELLI (RESPONDENT). (WITHDRAWN).

16767-69-U: GIULIANI CONSTRUCTION COMPANY LIMITED (APPLICANT)
V. VETTORE CONTATO (RESPONDENT). (WITHDRAWN).

16768-69-U: TORONTO PLASTERING COMPANY LIMITED (APPLICANT)
V. VETTORE CONTATO (RESPONDENT). (WITHDRAWN).

16769-69-U: ROSELAWN PLASTERING COMPANY LIMITED (APPLICANT)
V. DANILO SANTIN (RESPONDENT). (WITHDRAWN).

16812-69-U: BARTOZZI BROTHERS CONSTRUCTION LIMITED, CARRYING
ON BUSINESS UNDER THE NAME AND STYLE OF ONTARIO PLASTERING
COMPANY (APPLICANT) V. ANTONIO VECCHIARELLI (RESPONDENT).
(WITHDRAWN).

16967-69-U: PITTS-McNAMARA-ATLAS--A JOINT VENTURE OF C.A.
PITTS CONSTRUCTION (ONTARIO) LTD., McNAMARA CORPORATION LIMITED
AND ATLAS CONSTRUCTION CO LIMITED (APPLICANT) V. CERTAIN
EMPLOYEES OF THE APPLICANT NAMED ON THE ATTACHED LIST
(RESPONDENTS). (WITHDRAWN).

17031-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT)
V. KENT COUNTY BOARD OF EDUCATION (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF
DURING DECEMBER

16464-69-U: RETAIL & FOOD EMPLOYEES' LOCAL UNION 175,
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA
AFL-CIO-CLC (COMPLAINANT) V. GREAT ATLANTIC & PACIFIC TEA COMPANY,
LIMITED, AND KEN ADAMS (RESPONDENT). (WITHDRAWN).

16474-69-U: RETAIL & FOOD EMPLOYEES' LOCAL UNION 175, AMALGA-
MATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO-
CLC (COMPLAINANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY
LIMITED (RESPONDENT). (WITHDRAWN).

16581-69-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF
NORTH AMERICA (COMPLAINANT) V. GALCO FOOD PRODUCTS LIMITED
(RESPONDENT). (DISMISSED).

16694-69-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF
NORTH AMERICA (COMPLAINANT) V. GALCO FOOD PRODUCTS LIMITED
(RESPONDENT). (DISMISSED).

16788-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BERG MFG (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

16800-69-U: CALVIN NIMMO (COMPLAINANT) V. STANDARD BRANDS LIMITED (RESPONDENT). (DISMISSED).

- AND -

16801-69-U: DANIEL MACNEIL (COMPLAINANT) V. STANDARD BRANDS LIMITED (RESPONDENT). (WITHDRAWN).

(SEE INDEXED ENDORSEMENT PAGE 1148).

16825-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BERG MFG (CANADA) LTD. (RESPONDENT). (WITHDRAWN).

16850-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. ONTARIO BAKERY (RESPONDENT). GRANTED).

- AND -

16851-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (COMPLAINANT) V. ONTARIO BAKERY (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1151).

16857-69-U: BERG MFG (CANADA) LIMITED (APPLICANT) V. CERTAIN EMPLOYEES OF THE APPLICANT NAMED ON THE ATTACHED LIST (RESPONDENT). (WITHDRAWN).

16893-69-U: TORONTO TYPOGRAPHICAL UNION, NO. 91 (COMPLAINANT) V. OFFSET MAKE UP LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1152).

16901-69-U: GENERAL TRUCK DRIVERS LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. PETERBOROUGH FREIGHT LINES LIMITED (RESPONDENT). (WITHDRAWN).

16906-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. MACDONALD CONSOLIDATED LIMITED (RESPONDENT). (WITHDRAWN).

16914-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SHOPPERS DRUG MART (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1156).

16930-69-U: EVENT CONSTRUCTION LIMITED (COMPLAINANT) V. OPERATIVE PLASTERERS & CEMENT MASONS UNION, LOCAL 117 (RESPONDENT). (WITHDRAWN).

16953-69-U: FREDERICO DONOTTO AND ALBINO DONOTTO, CARRYING ON BUSINESS AS BELMONT PLASTERING COMPANY (COMPLAINANT) V. OPERATIVE PLASTERERS & CEMENT MASONS UNION, LOCAL 117 (RESPONDENT). (WITHDRAWN).

16977-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. TORONTO WESTERN HOSPITAL (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1163).

16982-69-U: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

JURISDICTIONAL DISPUTE

16237(B)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCALS 27, 3233, 681, 3227, 666 AND 1963 AND THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

16460-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (INTERVENER). (REQUEST DENIED).

- AND -

16468-69-R: THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1167).

16715-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WHITAKER CABLE OF GUELPH LIMITED (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

15422-68-R: RICHARD TIFFIN, MARY MASON, RONALD McLEAN, MANUEL CAVACAS, REGINA VROMAN, AND TOM SCHINKELSHOEK, AND OTHERS (APPLICANTS) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (RESPONDENT) V. NORTH AMERICAN PLASTICS CO. LTD. (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: DECEMBER 9, 1969.

1. FOLLOWING THE COMPLETION OF THE EVIDENCE GIVEN IN SUPPORT OF THIS APPLICATION, THE RESPONDENT UNION MOVED THAT THE APPLICATION BE DISMISSED WITHOUT DEALING WITH ANY OTHER MATTERS INVOLVED ON THE BASIS THAT THE EVIDENCE OF RICHARD TIFFIN, THE CHIEF WITNESS AND ONE OF THE APPLICANTS, WAS NOT CREDIBLE. INDEED THE RESPONDENT UNION ALLEGED THAT HE GAVE PERJURED TESTIMONY IN THAT INTER ALIA, HE TESTIFIED TO ONE CERTAIN SET OF FACTS RELATING TO THE ORIGINATION AND CIRCULATION OF THE PETITION, BUT WHEN FACED ON FURTHER EXAMINATION WITH STATEMENTS HE MADE TO THE BOARD'S EXAMINER CONTAINED IN THAT REPORT, HE CHANGED HIS FACTS TO SUIT A DIFFERENT TIME SCHEDULE. COUNSEL FOR THE UNION ALSO POINTED OUT THAT THERE WERE DISCREPANCIES BETWEEN HIS EVIDENCE AND THAT OF SOME OF THE OTHER WITNESSES WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE PETITION AND ALSO REFERRED TO THE STATEMENT OF THE BOARD IN PARAGRAPH FOUR OF ITS DECISION DATED OCTOBER 30, 1969 REFERRING TO TIFFIN'S REPRESENTATIONS IN COURT. BOTH COUNSEL FOR THE OTHER PARTIES OPPOSED THIS MOTION AND SUBMITTED THAT WHILE THERE MAY BE SOME INCONSISTENCIES AND DISCREPANCIES BETWEEN TIFFIN'S EVIDENCE AND THAT OF THE OTHER WITNESSES, HAVING REGARD TO THE LONG PERIOD OF TIME BETWEEN THE EVENTS AND THIS HEARING, AND THE FACT THAT TIFFIN VOLUNTEERED TO CHANGE HIS TESTIMONY, HIS CREDIBILITY HAS NOT BEEN IMPEACHED.

2. WE HAVE CAREFULLY REVIEWED ALL OF THE EVIDENCE NOW BEFORE US IN SUPPORT OF THE APPLICANT'S CASE AND HAVE GIVEN SERIOUS CONSIDERATION TO THE MOTION OF THE RESPONDENT. WHILE THE BOARD MUST BE VERY CAREFUL NOT TO ACCEPT UNTRUTHFUL TESTIMONY IT IS UP TO THE BOARD TO DETERMINE THE ISSUE OF CREDIBILITY IN EACH INSTANCE. IN OUR VIEW, TO FIND THAT EVIDENCE IS PERJURED REQUIRES VERY STRONG AND PERSUASIVE PROOF TO MEET THE BOARD'S HIGH STANDARDS NOT ONLY OF ACCEPTING EVIDENCE, BUT IN REJECTING EVIDENCE ON THIS BASIS. WE MUST ALSO POINT OUT THAT UNDER THE BOARD'S PROCEDURE WHICH WAS FOLLOWED IN THIS CASE, THE WITNESSES WERE EXAMINED IN CHIEF BY THE BOARD ONLY AND COUNSEL FOR THE PARTIES WERE NOT, AT THAT STAGE, PERMITTED TO CROSS-EXAMINE THE WITNESSES BUT ONLY TO PUT OTHER QUESTIONS IN CHIEF TO THE WITNESSES THROUGH THE BOARD AND ONLY WITH ITS CONSENT. THE BOARD THEN DOES NOT HAVE, FOR THE PURPOSES OF ASSESSING CREDIBILITY, THE USUAL TESTS IN

ADDITION TO THE EXAMINATION IN CHIEF. WE MUST ALSO POINT OUT THAT THIS WITNESS IN GIVING EVIDENCE TO THE BOARD'S EXAMINER, WAS NOT TESTIFYING AT THAT TIME UNDER OATH. IN THESE CIRCUMSTANCES THE BOARD MUST BE SATISFIED ON VERY CONCLUSIVE AND COMPELLING GROUNDS TO IMPEACH THE TESTIMONY OF SUCH WITNESSES.

3. THIS MOTION IS BASED SOLELY ON THE CREDIBILITY OF RICHARD TIFFIN AND WE ARE DEALING WITH THIS POINT ONLY. THE QUESTION OF IMPROPER MANAGEMENT INFLUENCE AS ALLEGED BY THE UNION IN ITS CHARGES AGAINST THE PETITION WAS NOT A BASIS FOR THE MOTION. THAT MATTER WILL BE HEARD AT ANOTHER TIME. WE DO NOT FEEL IT IS PROPER AT THIS POINT TO COMMENT IN ANY WAY WHATSOEVER ON THE EVIDENCE BEFORE US, WHICH WE RESERVE TO A PROPER TIME. WE SHOULD MAKE IT CLEAR, HOWEVER, THAT THE RESULT OF THIS DECISION SHOULD NOT BE INTERPRETED AS AN ACCEPTANCE OF ALL OF THE EVIDENCE BEFORE US. IT IS SUFFICIENT FOR THE PURPOSES OF THE PRESENT MOTION TO STATE THAT AT THIS STAGE OF THE PROCEEDINGS ON THE EVIDENCE, WE ARE NOT PREPARED TO DISMISS THE APPLICATION FOR THE REASONS SUBMITTED BY THE UNION AT THIS TIME IN SUPPORT OF ITS MOTION. ACCORDINGLY, THE MOTION IS DISMISSED.

4. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING AT CHATHAM, AT WHICH TIME THE BOARD WILL HEAR THE EVIDENCE AND ARGUMENTS RELATING TO THE CHARGES OF THE RESPONDENT AGAINST THE PETITION.

DISSENT OF BOARD MEMBER P. J. O'KEEFFE: DECEMBER 9, 1969.

I DISSENT FROM THE DECISION OF THE MAJORITY FOR REASONS TO BE GIVEN LATER IN WRITING.

15719-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. PARAGON TOOLS COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS.).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: L. A. MACLEAN, ROBERT WHITE, KENNETH SIMPSON, MIKE MALIZIA FOR THE APPLICANT; F. W. KNIGHT, E. BIERER FOR THE RESPONDENT; KELLY HANSEN, CARL LLOYD FOR THE GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
E. BOYER: DECEMBER 19, 1969.

1. THE BOARD CONTINUED THE HEARING IN THIS MATTER TO CONSIDER THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES RELATING TO THE APPLICANT'S SUBMISSION THAT IN VIEW OF ITS MEMBERSHIP POSITION AND THE UNDUE

INFLUENCE OF MANAGEMENT ON THE EMPLOYEES CONCERNED, THE BOARD SHOULD EXERCISE ITS DIRECTION UNDER THE PROVISIONS OF SECTION 7(5) OF THE LABOUR RELATIONS ACT AND CERTIFY THE UNION AND NOT ORDER A REPRESENTATION VOTE AS SUCH A VOTE WOULD NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

2. THE FINAL HEARING IN THIS MATTER WAS HELD ON SEPTEMBER 24TH AFTER SEVEN DAYS OF HEARINGS IN THIS MATTER. BECAUSE OF THE UNAVOIDABLE DELAY IN DEALING WITH THIS MATTER AND HAVING REGARD TO CONSIDERABLE TIME ELAPSED (THE APPLICATION WAS MADE ON FEBRUARY 24TH, 1969) AND THE IMPORTANT RIGHTS OF THE PARTIES TO BE DEALT WITH, THE BOARD DOES NOT AT THIS TIME WISH TO FURTHER DELAY THE PROCEEDINGS BY GIVING AN EXHAUSTIVE REVIEW OF THE VOLUMINOUS EVIDENCE. WE HAVE REVIEWED THE EVIDENCE IN DETAIL AND HAVE CONSIDERED ALL OF THE ARGUMENTS OF COUNSEL FOR THE PARTIES. ON THAT BASIS WE FIND THAT THE RESPONDENT OPENLY AND IN BAD FAITH ATTEMPTED TO INFLUENCE THE EMPLOYEES TO EXERCISE THEIR JUDGEMENT AGAINST THE APPLICANT BOTH BEFORE AND AFTER THE APPLICATION FOR CERTIFICATION WAS MADE. WE WERE NOT AT ALL PERSUADED BY THE TESTIMONY OF MR. BIERER THAT THE COMPANY WAS INTERESTED ONLY IN THE INTERESTS OF THE EMPLOYEES AND WE FIND HIS TESTIMONY TO BE MOST UNRELIABLE. WHERE THERE WAS CONFLICT BETWEEN HIS TESTIMONY AND THAT OF THE WITNESSES FOR THE APPLICANT, WE GAVE WEIGHT TO THEIR TESTIMONY IN PREFERENCE TO THAT OF MR. BIERER. THE WITNESSES FOR THE APPLICANT, WHILE TAKING A PARTISAN POSITION WERE IN GENERAL, HAVING ASSESSED THEIR DEMEANOUR IN THE WITNESS STAND, STRAIGHTFORWARD AND WERE NOT SHAKEN IN ANY MATERIAL WAY IN THEIR TESTIMONY.

3. WE FIND THAT THE RESPONDENT FROM THE VERY INCEPTION OF THE POSSIBILITY THAT THE EMPLOYEES OR SOME OF THEM MIGHT DESIRE A BARGAINING AGENT, TOOK POSITIVE STEPS TO DETER, NOT ONLY THE SO-CALLED RING-LEADERS, BUT ALL THE EMPLOYEES IN THE PLANT, FROM EXERCISING THEIR OWN CHOICE AS PROVIDED UNDER THE LABOUR RELATIONS ACT. WE CANNOT ACCEPT THE ARGUMENT THAT ONLY THE PROTAGONISTS WERE KNOWLEDGEABLE OF THE COMPANY'S EFFORTS. IF WE ACCEPT MR. BIERER'S EVIDENCE, HE KNEW INTIMATELY WHAT WAS GOING ON IN THE PLANT AT ALL TIMES AND WHAT THE EMPLOYEES WERE THINKING. ON THE OTHER HAND, THE INFERENCE MUST BE DRAWN THAT THE EMPLOYEES KNEW EXACTLY WHAT MANAGEMENT WAS DOING AND WANTED THEM TO DO. THE DISCHARGE OF THE THREE EMPLOYEES WHO WERE KNOWN TO BE UNION SUPPORTERS, FOLLOWING THE UNION'S ORGANIZING MEETING AND THE REASONS GIVEN BY THE RESPONDENT WHICH WE FIND TO BE UNACCEPTABLE, ALL LEAD TO THE INESCAPABLE INFERENCE THAT THEY WERE DISCHARGED BECAUSE OF THEIR ALLEGED UNION ACTIVITY. WHILE THEY WERE, LATER THAT WEEK REINSTATED, THE WHOLE MATTER COULD HARDLY ESCAPE THE ATTENTION OF EVERY EMPLOYEE IN THAT PLANT. IN A LIKE MANNER THE INTERVIEWS OF A NUMBER OF EMPLOYEES IN MR. BIERER'S OFFICE DURING WORKING HOURS IN THAT WEEK COULD HARDLY GO UNNOTICED, NOR WOULD IT BE THE NORMAL EMPLOYEE WHO WOULD NOT SHARE HIS EXPERIENCES IN THIS

REGARD WITH OTHER EMPLOYEES. THERE WAS THEN A CONCERTED EFFORT BY THE MANAGEMENT TO SQUELCH THE ENTIRE MOVEMENT TO ORGANIZE AT AN EARLY DATE, AND EVEN IN FACE OF THE RECEIPT OF THE BOARD'S NOTICE OF APPLICATION, MANAGEMENT ATTENDED A MEETING WITH THE EMPLOYEE SPOKESMEN, AGAIN WITH A FORTHRIGHT OFFER TO INDUCE THE EMPLOYEES TO RID THEMSELVES OF THE UNION. MANAGEMENT DENIES THAT AN "OFFER" IN THE LEGAL SENSE WAS MADE TO THE EMPLOYEES BUT THE UNDERSTANDING OF THE EMPLOYEES PRESENT WAS CERTAINLY THAT IF THEY "DUMPED" THE UNION THE COMPANY WAS PREPARED TO DO CERTAIN THINGS FOR THEM AND THIS DID HAVE CONSIDERABLE EFFECT ON THESE EMPLOYEES. THE "OFFER" WAS WITHDRAWN THE NEXT DAY AFTER, MR. BIERER SAID, HE READ THE ACT AND THIS WAS COMMUNICATED TO MIKE MALIZIA AND OTHERS.

4. FURTHER, THERE IS NO DOUBT IN OUR MINDS THAT TALK OF CLOSING THE PLANT IF THE UNION WAS CERTIFIED WAS BEING CIRCULATED, AND WE ACCEPT THE EVIDENCE OF MALIZIA IN THIS REGARD. IT IS NOT WHETHER THAT WAS A TRUE STATEMENT BUT WHETHER THE EMPLOYEES BELIEVED IT TO BE TRUE IN THE CIRCUMSTANCES, AND WE ARE OF THE LATTER VIEW-POINT, PARTICULARLY SINCE IT INITIALLY EMANATED FROM MANAGEMENT. SOME WITNESSES, FOR EXAMPLE, FARKAS, SAID THAT THEY DID NOT BELIEVE THE PLANT WOULD CLOSE BUT CLEARLY IT WAS A SUBJECT FOR DISCUSSION IN THE PLANT. MR. GIGNAC SAID THERE WAS A LOT OF TALK IN THE PLANT ABOUT CLOSING DOWN AND ALSO THAT NOTHING COULD BE DONE UNTIL THE "UAW BUSINESS IS OVER WITH". WE ARE SATISFIED THAT THE STATEMENT WAS MADE TO THOSE WHOM MR. BIERER INTERROGATED IN THIS OFFICE AND IT IS A REASONABLE INFERENCE TO DRAW, AND IN VIEW OF MALIZIA'S TESTIMONY THAT A STATEMENT SUCH AS THIS GOING TO THE VERY ROOT OF THE EMPLOYEE-EMPLOYER RELATIONSHIP WOULD BE CONVEYED TO OTHER EMPLOYEES AS WELL. IT MUST BE REMEMBERED THAT THERE WERE AT LEAST THIRTY PERSONS AT THE UNION ORGANIZING MEETING WHO AT THAT TIME INDICATED THEIR SUPPORT FOR THE UNION AND IT IS A SAFE ASSUMPTION THAT MOST OF THEM WOULD BE INTERESTED IN THE WHOLE MATTER ALONG WITH THEIR SPOKESMAN. ALSO, BETWEEN THAT MEETING AND THE TERMINAL DATE OF THIS APPLICATION SOME TWENTY-SEVEN MORE EMPLOYEES INDICATED THEIR SUPPORT FOR THE APPLICANT ALTOGETHER OF COURSE, REPRESENTING A MAJORITY OF THE EMPLOYEES IN THE PLANT.

5. THE PURPOSE OF SECTION 7(5) OF THE ACT IS IN PROPER CASES, TO PRESERVE THE RIGHTS OF A MAJORITY OF EMPLOYEES WHO ARE MEMBERS OF A TRADE UNION TO THEIR REPRESENTATIVE RIGHTS UNDER THE ACT. IT IS NOT SUFFICIENT TO ARGUE THAT THE REPRESENTATION VOTE PROCESS SHOULD BE ADHERED TO IN ALL CASES WHATSOEVER SOLELY BECAUSE IT IS DEMOCRATIC TO DO SO. OBVIOUSLY, THE LEGISLATURE IN ENACTING THIS SECTION PERCEIVED SITUATIONS WHERE A VOTE EVEN THOUGH BY SECRET BALLOT WOULD NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES CONCERNED BECAUSE OF UNDUE INFLUENCE BROUGHT TO BEAR ON THEM. THE WHOLE TENOR OF THIS SECTION OF THE ACT IS TO PROVIDE FOR THE DETERMINATION OF THE

WISHES OF THE EMPLOYEES AND NOT THOSE OF EITHER A UNION OR THEIR EMPLOYER. IN A NORMAL SITUATION WHERE THERE IS DOUBT AS TO THE WISHES OF THE EMPLOYEES, A REPRESENTATION VOTE MAY BE THE RIGHT WAY TO DETERMINE SUCH MATTERS BUT WHERE, AS IN THE PRESENT CASE, UNDUE INFLUENCE IS ALLEGED, SUBJECT TO THE ONUS OF PROVING SUCH INFLUENCE BY SUBSTANTIAL, COMPELLING EVIDENCE, THE BOARD MAY EXERCISE ITS DISCRETION IN ACCORDANCE WITH THE INTENT OF THE LEGISLATURE IN THIS REGARD. THIS ONUS ON THE PARTY INVOKING THIS SECTION DOES NOT HAVE TO BE SATISFIED BY ABSOLUTE PROOF OF ALL MATTERS; REASONABLE AND PROPER INFERENCES CAN AND MUST BE DRAWN FROM THE EVIDENCE PUT BEFORE THE BOARD. WHERE SUCH EVIDENCE SUPPORTS THE CHARGES THEN THE BOARD CANNOT IGNORE THE PROVISIONS OF SECTION 7(5) TO THE DETRIMENT OF THE MAJORITY WHO HAVE ALREADY FREELY INDICATED THEIR DESIRE. FURTHERMORE, IT IS NOT ENOUGH TO ARGUE THAT IF THE UNION STILL ENJOYS A MAJORITY SUPPORT THEN A VOTE WILL NOT HURT THEM BUT ONLY CONFIRM THEIR STAND, THE WHOLE THRUST OF THIS SECTION IS PREMISED ON THE FINDING THAT A VOTE IN ALL THE CIRCUMSTANCES WILL NOT DISCLOSE THE TRUE WISHES OF THE EMPLOYEES BECAUSE OF THE OTHER FACTORS AFOREMENTIONED.

6. THE BOARD HAS ALWAYS RECOGNISED THE RESPONSIVENESS OF EMPLOYEES TO IDENTIFY THEIR WISHES TO THAT OF THEIR EMPLOYER, AND BECAUSE OF THAT RELATIONSHIP CAN BE INFLUENCED TO ACT AGAINST THEIR OWN INTERESTS. THE ACT ATTEMPTS TO PROVIDE RELIEF TO SUCH SITUATIONS WHERE THE INFLUENCE EXERTED BY MANAGEMENT ON THE EMPLOYEES IS COERCIVE. SEE PRESTON & SONS LIMITED CASE 1957 CCH CLLR TRANSFER BINDER 155-59 P 16,089; WOLVERINE TUBE LTD. CASE 63 CLLC 1226; PIGOTT MOTORS CASE, 63 CLLC 1125. INDEED, ALTHOUGH THE BOARD DID NOT INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE PETITION IN THIS MATTER, IT IS THE EVIDENCE OF MALIZIA THAT MR. KAUER, GENERAL MANAGER OF THE RESPONDENT, AFTER THE MEETING AT THE AMBASSADOR HOTEL WHERE THE "OFFER" WAS MADE, SUGGESTED TO HIM TO TALK TO THE OTHERS TO GET A PETITION GOING AND ALSO SUGGESTED A HEADING AND THE NUMBER OF SIGNATURES REQUIRED FOR THE PETITION. WE DO NOT ACCEPT MR. KAUER'S DENIAL OF THIS CONVERSATION AND WE FIND IT TO BE FURTHER EVIDENCE OF CONTINUING PROGRAMME OF MANAGEMENT TO DEFEAT THE APPLICATION. IN THE SAME VEIN, A SECOND PETITION WAS CIRCULATED IN FAVOUR OF A 'SHOP UNION' AND THERE ARE STRONG INFERENCES TO BE TAKEN FROM THE EVIDENCE THAT THIS WAS CIRCULATED IN THE PRESENCE AND WITH THE TACIT APPROVAL OF MANAGEMENT, OF WHICH THE EMPLOYEES WERE READILY AWARE.

7. SUBJECTIVE EVIDENCE OF THE OBJECTORS THAT THEY WERE NOT INFLUENCED IN SIGNING A PETITION DOES NOT OUTWEIGH THE EVIDENCE OF MANAGEMENT INTERFERENCE IN THE RIGHT TO TRADE UNION REPRESENTATION AS AT THIS STAGE BOTH THE COMPANY'S INTERESTS ARE BY THE PROVISIONS OF SECTION 7 OF THE ACT, WHEREBY BUT FOR THE PROVISION OF SECTION 7(5) A REPRESENTATION VOTE WOULD BE TAKEN, CLOSELY IDENTIFIED WITH THOSE

OF THE OBJECTORS ALTHOUGH PERHAPS FOR DIVERGENT REASONS. IN ANY EVENT THE PETITIONERS WHO ARE IN FACT PARTIES, WILL NOT BE INFLUENCED TO CHANGE THEIR MINDS. IN THE WOLVERINE TUBE LTD. CASE, THE BOARD STATED AS FOLLOWS:

"REASONABLE AND NECESSARY INFERENCES MAY AND MUST BE DRAWN FROM ALL THE EVIDENCE ADDUCED AND THAT WHICH IS CLEARLY INFERABLE FROM THE EVIDENCE IS AS MUCH PROVED AS IF IT HAD BEEN ESTABLISHED BY DIRECT EVIDENCE. INDEED, IN REACHING A DECISION AS TO WHETHER OR NOT EMPLOYEES HAVE OR HAVE NOT BEEN INFLUENCED BY IMPROPER CONDUCT ON THE PART OF A UNION OR EMPLOYER, THE BOARD HAS OFTEN BEEN CONSTRAINED TO VIEW THE OBJECTIVE FACTS AND OVERT ACTS OF THE PARTIES WITH THE REASONABLE INFERENCES TO BE GATHERED FROM THEM, AS MORE PERSUASIVE EVIDENCE OF THE TRUE FACTS THAN THE SUBJECTIVE ASSERTIONS AND COUNTER-ASSERTIONS OF EMPLOYEES, GIVEN IN THE PRESENCE OF THE UNION OR EMPLOYER, THAT THEY WERE OR WERE NOT INFLUENCED, OR IN WHAT WAY, BY THE CONDUCT IN QUESTION. NEEDLESS TO SAY, IT IS HARDLY POSSIBLE FOR THE BOARD TO BASE ITS DECISION IN SUCH MATTERS ON THE CERTAINTY OF MATHEMATICAL EVIDENCE. THE MOST THAT CAN GENERALLY BE EXPECTED IS, AND OF COURSE, THE RULE OF EVIDENCE REQUIRES, THAT THE BOARD WILL MAKE ITS FINDINGS OF FACT, IN SUCH CASES AS THIS, ON WHAT IS THE MORE PROBABLE CONCLUSION IN THE CIRCUMSTANCES."

8. WHAT IS "UNDUE INFLUENCE" FOR THE PURPOSES OF THE BOARD'S DETERMINATION? IT DOES NOT JUST CONSTITUTE OVERT AND POSITIVE ACTS WHICH CAN BE PROVEN BEYOND DOUBT, WHICH ARE DESIGNED OR INTENDED TO IMPEL PERSONS TO REACT IN THE WAY INDICATED BY THE EMPLOYER. IT ALSO IMPLIES THAT EVIDENCE OF THE TOTAL ATMOSPHERE OR CONDITION OF THE PLANT IN RELATIONSHIP TO THE EMPLOYEES MUST BE GIVEN WEIGHT IN ASSESSING THIS MATTER. THIS RESULTS FROM THE INFERENCES THAT CAN BE DRAWN FROM THE TOTALITY OF THE EVIDENCE RELATING TO THIS ISSUE. ON THIS BASIS WE HAVE NO HESITATION IN FINDING THAT THE RESPONDENT SET OUT WITH THE INTENTION OF USING ITS INFLUENCE TO PERSUADE THE EMPLOYEES THAT A UNION WOULD NOT SERVE THE INTEREST OF THE EMPLOYEES AND TO DEFEAT THE APPLICATION AND THEIR REPRESENTATION RIGHTS WITHOUT REGARD TO THEIR WISHES AND COMPLETELY CONTRARY TO THE PURPOSE AND INTENT OF THE LABOUR RELATIONS ACT. IN THESE CIRCUMSTANCES WE ARE SATISFIED THAT A REPRESENTATION VOTE WOULD NOT LIKELY DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

9. HAVING REGARD TO ALL OF THE EVIDENCE, AND HAVING CONSIDERED ALL THE REPRESENTATIONS OF THE PARTIES, AND HAVING BEEN SATISFIED THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION, AND FOR THE FOREGOING REASONS, WE FIND THAT THE APPLICANT SUCCEEDS UNDER THE PROVISIONS OF SECTION 7(5) OF THE ACT.

10. ACCORDINGLY, A CERTIFICATE WILL ISSUE TO THE APPLICANT FOR THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 OF THE BOARD'S DECISION DATED MAY 20TH, 1969.

DECISION OF BOARD MEMBER R. W. TEAGLE: DECEMBER 19, 1969.

ALTHOUGH I AGREE WITH THE FINAL RESULT OF THE MAJORITY DECISION, I REGRET I AM IMPELLED TO DISASSOCIATE MYSELF FROM THE LANGUAGE USED THEREIN.

16014-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NORFOLK COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND J.E.C. ROBINSON.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
E. BOYER: DECEMBER 16, 1969.

1. HAVING REGARD TO THE INTERIM REPORT OF THE EXAMINER DATED THE 25TH DAY OF NOVEMBER, 1969, WE FIND THAT THE ARRANGEMENT BETWEEN L. ANDERSON, P. DRIEDGER, D. DRINKWATER, H. MISENER AND J. MCCUTCHEON AND THE RESPONDENT DOES NOT CONSTITUTE THOSE PERSONS AS INDEPENDENT CONTRACTORS. IT THEREFORE FOLLOWS THAT ALL THOSE PERSONS WHOSE NAMES ARE LISTED OPPOSITE THE NAMES OF THOSE FIVE PERSONS ON APPENDIX 'A' OF THE INTERIM REPORT ARE EMPLOYEES FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

2. THE REGISTRAR IS DIRECTED TO PROCEED IN ACCORDANCE WITH THE DECISION OF THE BOARD DATED AUGUST 25TH, 1969.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: DECEMBER 16, 1969.

I DISSENT. HAVING REGARD TO THE PRECEDING CRITERIA OF THE BOARD AS INDICATED IN SUCH CASES AS RIDGETOWN DISTRICT HIGH SCHOOL BOARD, 1969 MARCH OLRB MTHLY. REP. PAGE 1330, I WOULD HAVE FOUND THAT

L. ANDERSON, P. DRIEDGER, D. DRINKWATER, H. MISENER AND J. MCCUTCHEON WERE INDEPENDENT CONTRACTORS. ACCORDINGLY THOSE PERSONS WHOSE NAMES ARE LISTED OPPOSITE THE NAMES OF THOSE FIVE PERSONS ON APPENDIX 'A' OF THE INTERIM REPORT ARE EMPLOYEES OF THOSE INDEPENDENT CONTRACTORS AND NOT EMPLOYEES OF THE RESPONDENT BOARD OF EDUCATION FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

16060-69-R: LOCAL 204 SERVICE EMPLOYEES' INTERNATIONAL UNION AFFILIATED WITH THE AFL. CIO. CLC. (APPLICANT) V. VICTORIA UNIVERSITY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE:

APPEARANCES AT THE HEARING: M. LEVINSON, T. WOHL FOR THE APPLICANT;
DONALD S. MILLS, K. DINSMORE, W. E. RYAN FOR THE RESPONDENT;
ALEXANDER L. PHILLIPS FOR THE GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFE: DECEMBER 8, 1969.

. . .

2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS TORONTO CAMPUS IN THE MAINTENANCE AND SERVICE OF BUILDINGS AND GROUNDS AND IN THE PROVISION OF FOOD SERVICES, SAVE AND EXCEPT FOREMAN AND SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE AND CLERICAL STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE UNIVERSITY VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT DIETITIANS AND HEAD CHEF ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. AT A HEARING HELD ON OCTOBER 29TH, 1969 THE BOARD INQUIRED INTO THE APPLICATION FOR MEMBERSHIP TO THE APPLICANT BY STANLEY PTASZYNSKI. HE HAS BEEN EMPLOYED IN THE MAINTENANCE DEPARTMENT OF THE RESPONDENT FOR ABOUT ONE YEAR. HIS EVIDENCE IS THAT HE DID NOT SIGN THE APPLICATION FOR MEMBERSHIP CARD AND COULD NOT IDENTIFY THE SIGNATURE THAT APPEARED ON THE CARD. HE DID PAY THE SUM OF \$1.00 TO A FELLOW EMPLOYEE JOSEPH JAWORSKI WHO GAVE HIM A RECEIPT. HE SAID THAT HE DID NOT KNOW WHY HE PAID THE MONEY OR WHAT THE RECEIPT WAS AND THOUGHT IT MIGHT HAVE BEEN FOR CHARITY. THE EVIDENCE DISCLOSES THAT HE AND JAWORSKI ARE FRIENDS AND HAD TRAVELLED TO WORK

TOGETHER ON OCCASION AND DURING ONE OF THOSE TRIPS, THEY DISCUSSED THE UNION. THERE IS CONFLICTING TESTIMONY AS TO WHAT EACH SAID BUT AS A RESULT OF THAT CONVERSATION, JAWORSKI OBTAINED AN APPLICATION CARD FROM PAUL LE BLANC WHOM HE KNEW HAD VOLUNTEERED TO ATTEMPT TO OBTAIN MEMBERS FOR THE UNION. JAWORSKI SAID THAT HE GAVE THE CARD TO PTASZYNSKI THE NEXT EVENING AND HE TOLD JAWORSKI TO FILL IT IN WHICH HE DID. HE DID NOT SIGN PTASZYNSKI'S NAME ON THE PLACE FOR THE SIGNATURE BUT PRINTED IN THE NAME AT THE TOP ALONG WITH THE OTHER INFORMATION NECESSARY. THE BOARD HAS NO EVIDENCE AS TO WHO DID IN FACT INSCRIBE A TYPE OF SIGNATURE PURPORTING TO BE THAT OF PTASZYNSKI. IN ANY EVENT, JAWORSKI TOOK THE CARD AND THE \$1.00 TO LEBLANC WHO GAVE HIM A YELLOW RECEIPT. JAWORSKI DID NOT TELL LEBLANC THAT THE SIGNATURE WAS NOT THAT OF PTASZYNSKI AND CLAIMED THAT PTASZYNSKI KNEW THAT HE WAS APPLYING FOR MEMBERSHIP IN THE UNION AT THAT TIME.

5. PAUL LE BLANC, A NIGHT WATCHMAN FOR THE RESPONDENT, TESTIFIED THAT HE WAS ASKED TO HELP TO OBTAIN MEMBERS AND HAD BEEN INSTRUCTED BY THE UNION'S ORGANIZER TO MAKE SURE HE COLLECTED THE MONEY FROM THE PERSON WHO SIGNED THE CARD. AT THE REQUEST OF JAWORSKI HE GAVE HIM A CARD FOR PTASZYNSKI WHOM HE SAID WAS INTERESTED IN JOINING AND RECEIVED IT BACK FROM JAWORSKI WITH THE SUM OF \$1.00 FOR WHICH HE GAVE A RECEIPT. HE DID NOT SEE PTASZYNSKI AT ALL AND WHEN LE BLANC SAW HIS CARD THERE WAS JUST HIS NAME ON IT AT THE TOP AND NO OTHER SIGNATURE APPEARED ON IT. THE FOLLOWING SUNDAY MR. NICHOLLS, A UNION ORGANIZER, ATTENDED AT LE BLANC'S HOME AND LE BLANC GAVE HIM FIVE CARDS AND FIVE DOLLARS, INCLUDED IN WHICH WAS PTASZYNSKI'S CARD. MR. NICHOLLS ASKED HIM IF HE HAD COLLECTED THE MONEY FROM EACH PERSON AND HE AFFIRMED THAT HE HAD AND DID NOT THINK OF ANY IRREGULARITY WITH THE ONE CARD AS HE HAD NOT LOOKED AT IT CLOSELY AND ASSUMED IT WAS ALL RIGHT BECAUSE JAWORSKI AND PTASZYNSKI WERE FRIENDS. HE DID RECEIVE THE MONEY FROM THE PERSONS WHO SIGNED THE OTHER FOUR CARDS.

6. MR. NICHOLLS TESTIFIED THAT LE BLANC WAS ASSISTING IN THE CAMPAIGN AND HAD INSTRUCTED HIM TO MAKE SURE THE PERSON SIGNING THE CARD ALSO PAID THE MONEY. ON THE SUNDAY AFTERNOON REFERRED TO ABOVE, HE ASKED LE BLANC IF HE COLLECTED THE MONEY FROM ALL THE PEOPLE AND UPON RECEIVING AN AFFIRMATIVE REPLY, CHECKED THE CARDS AND ACCEPTED THEM. HE DID NOT CHECK THE SIGNATURES ON EACH CARD BUT SAID THAT THE CARD WHICH WAS GIVEN TO HIM FOR PTASZYNSKI WAS EXACTLY THE SAME THEN AS IT WAS WHEN SUBMITTED TO THE BOARD. HE DID NOT SIGN THE CARD OR KNOW WHO DID. MR. NICHOLLS SIGNED THE FORM 8 DECLARATION.

7. AS HAS BEEN STATED IN MANY PREVIOUS DECISIONS OF THE BOARD, THERE IS A HEAVY ONUS RESTING ON THE UNION TO MAKE SURE THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED IN SUPPORT OF AN APPLICATION FOR CERTIFICATION IN ALL RESPECTS BE IN PROPER FORM AND THERE IS A DUTY ON THE APPLICANT TO DISCLOSE TO THE BOARD ANY DEFECTS OR IRREGULARITIES ATTACHING TO THAT EVIDENCE. IF THE BOARD FINDS THAT THERE IS ANY ATTEMPT TO MISLEAD THE BOARD BY SUCH EVIDENCE THEN, DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF THE MATTER, THE APPLICATION MIGHT BE DISMISSED. THIS MOST OFTEN OCCURS WHERE A PERSON IN AN OFFICIAL CAPACITY IN THE UNION HAS BEEN PERSONALLY INVOLVED WHETHER IN THE FIRST INSTANCE OR FOR FAILURE TO INQUIRE OF THE CIRCUMSTANCES FROM HIS ASSISTANTS. THE BOARD HAS CONSIDERED THAT IT IS SOMEWHAT LESS OF AN ONUS WHERE THE PERSONS INVOLVED ARE EMPLOYEES ONLY, WITH NO DIRECT AUTHORITY IN THE UNION. IN THE WEBSTER AIR EQUIPMENT CASE 1958 1 C.L.L.C. P. 18, 110 THE BOARD SAID IN PART AS FOLLOWS:

"...IN DEALING WITH THIS SITUATION, THE BOARD HAS MADE A DISTINCTION BETWEEN TWO TYPES OF CASES: (1) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION, AND (11) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF AN APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. IN SO FAR AS THE FIRST OF THESE IS CONCERNED, THE BOARD SAID IN THE RCA VICTOR COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, PAR. 17,076, C.L.C. 76-412, THAT, EVEN WHERE ONLY A SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS."

8. HERE MR. NICHOLLS DID MAKE INQUIRIES OF THE CANVASSER, MR. LE BLANC AND WAS SATISFIED WITH THE ANSWERS RECEIVED WHICH, IN THESE CIRCUMSTANCES, WE FIND WAS SUFFICIENT COMPLIANCE TO THE DIRECTION CONTAINED IN FORM 8. THE SIGNATURE APPEARING ON THE CARD IN QUESTION, WHILE IN A COMPARISON MADE BY THE BOARD WITH OTHER SPECIMEN SIGNATURES SUPPLIED BY THE RESPONDENT, APPEARED TO BE SUSPECT, IT IS QUITE CONCEIVABLE THAT MR. NICHOLLS WOULD NOT QUESTION THAT PARTICULAR SIGNATURE ON HIS CURSORY CHECK OF THE CARDS GIVEN TO HIM AND HE DID MAKE THE NECESSARY INQUIRIES REQUIRED BY THE BOARD RELATING TO THE PAYMENT OF THE MONIES. THERE IS NO DOUBT, HOWEVER, THAT LE BLANC AND JAWORSKI WERE WRONG IN THEIR PROCEDURE AND DID NOT MEET THE BOARD'S REQUIREMENTS WITH RESPECT TO PTASZYNSKI'S APPLICATION FOR MEMBERSHIP. WE ARE SATISFIED FROM THE EVIDENCE HOWEVER, THAT THEY ACTED THROUGH IGNORANCE OR CARELESSNESS BUT DID NOT HAVE ANY INTENTION TO MISLEAD THE UNION OR THE BOARD. ON THE EVIDENCE BEFORE US WE MUST FIND THAT THE APPLICATION FOR MEMBERSHIP SUBMITTED BY THE UNION FOR STANLEY PTASZYNSKI WAS NOT SIGNED BY HIM OR ON HIS BEHALF, WHICH IS A SUBSTANTIAL DEFECT AND THAT CARD CANNOT BE ALLOWED FOR THE PURPOSES OF THIS APPLICATION. IN ALL THE CIRCUMSTANCES, HOWEVER, WE FIND THAT THE REMAINDER OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IS NOT AFFECTED BY THE ACTIONS OF THE EMPLOYEES CONCERNED AND WE ARE NOT PREPARED TO ACCEPT THAT EVIDENCE AS VALID EVIDENCE OF MEMBERSHIP FOR THIS APPLICATION.

9. FOLLOWING THE REPORT OF THE EXAMINER DATED JULY 9TH 1969, THE BOARD AT A SUBSEQUENT HEARING FOR THAT PURPOSE, ENTERTAINED THE REPRESENTATIONS OF THE PARTIES AS TO THE CONTENTS OF THAT REPORT. THE PARTIES AGREED AT THE EXAMINER'S HEARING THAT THERE WERE, AS OF THE DATE OF THE APPLICATION, 110 EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. IN ADDITION, THE RESPONDENT ALLEGED THAT ALEXANDER PHILLIPS, JOHN PRIMROSE, ROSE ULICNY, ESTHER ROBINSON AND ETHEL KNOTT SHOULD BE INCLUDED IN THE BARGAINING UNIT TO WHICH THE APPLICANT OBJECTED. THE BOARD HAS THEREFORE IN RELATION TO THE AFOREMENTIONED PERSONS CONSIDERED THE EVIDENCE IN THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES.

10. THE BOARD FINDS THAT ROSE ULICNY, CLASSIFIED BY THE RESPONDENT AS CASHIER, DOES NOT EXERCISE MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

11. THE OTHER FOUR PERSONS ARE CHALLENGED BY THE APPLICANT ON THE BASIS THAT THEIR DUTIES AND RESPONSIBILITIES INDICATE THAT THEY ARE NOT APPROPRIATE FOR INCLUSION IN A MAINTENANCE TYPE BARGAINING UNIT FOR WHICH THE APPLICANT HAS APPLIED.

MR. PHILLIPS IS A PORTER, JOHN PRIMROSE IS A STOREKEEPER AND POSTAL CLERK, ETHEL KNOTT IS THE RECEPTIONIST AT ANNESLEY HALL AND ESTHER ROBINSON IS THE RECEPTIONIST AT WYMILWOOD HALL. THE BOARD RECENTLY EXAMINED THE DUTIES AND RESPONSIBILITIES OF PERSONS CLASSIFIED AS HALL CLERKS IN THE UNIVERSITY OF WESTERN ONTARIO CASE, O.L.R.B. MONTHLY REPORTS DECEMBER 1968, PAGE 856 AND FOUND THAT THEY WERE NOT APPROPRIATE FOR INCLUSION IN A SERVICE AND MAINTENANCE BARGAINING UNIT SIMILAR TO THE ONE APPLIED FOR IN THE INSTANT MATTER. WE ARE SATISFIED FROM THE EVIDENCE RELATING TO MR. PHILLIPS THAT HIS DUTIES AND RESPONSIBILITIES ARE SIMILAR TO THE OTHERS EMPLOYED IN A LIKE CAPACITY IN THE UNIVERSITY OF WESTERN ONTARIO AND, BASED ON THE DECISION IN THAT CASE, WE FIND THAT ALEXANDER PHILLIPS IS NOT INCLUDED IN THE BARGAINING UNIT.

12. THERE WAS CONSIDERABLE ATTENTION DIRECTED BY THE PARTIES TO THE VARIOUS DUTIES OF MR. PRIMROSE RELATING TO HIS CLASSIFICATION OF STOREKEEPER AND POSTAL CLERK AND THE TIME THAT HE SPENT IN EACH AREA. WHILE THERE IS SOME EVIDENCE INCLUDING THE LINE OF SUPERVISION, WHICH WOULD INDICATE A COMMUNITY OF INTEREST WITH THE MAINTENANCE GROUP, WE ARE SATISFIED FROM THE EVIDENCE THAT THE MAJORITY OF HIS TIME INVOLVES THE DUTIES RELATING TO THE SORTING AND DELIVERY OF MAIL. IT IS OUR OPINION THAT THE STOREKEEPER FUNCTION IS MERELY INCIDENTAL TO HIS MAIN FUNCTION OF POSTAL CLERK. A SIMILAR ISSUE WAS ALSO RAISED IN THE UNIVERSITY OF WESTERN ONTARIO CASE [SUPRA] WHEREIN THE BOARD FOUND THAT POSTAL DRIVERS WOULD THE MORE PROPERLY BE INCLUDED IN AN OFFICE AND CLERICAL UNIT THAN A MAINTENANCE UNIT. WE ARE SATISFIED THAT A SIMILAR RELATIONSHIP EXISTS IN THE INSTANT MATTER, AND WE FIND THAT JOHN PRIMROSE IS NOT INCLUDED IN THE BARGAINING UNIT.

13. THE PARTIES AGREED THAT NEITHER ETHEL KNOTT NOR ESTHER ROBINSON ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS OR EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT. BOTH OF THESE PERSONS ARE ENGAGED IN DESK DUTIES BASICALLY AS A RECEPTIONIST. THEY ANSWER THE TELEPHONE, TAKE MESSAGES AND DIRECT PEOPLE WHERE TO GO, KEEP A RECORD OF THE KEYS, ETC. ANY DUTIES WHICH RELATE TO THE CARE AND MAINTENANCE OF BUILDINGS AND GROUNDS ARE REALLY MINOR JANITORIAL DUTIES SUCH AS EMPTYING ASH TRAYS, MAKING SURE WINDOWS AND DOORS ARE LOCKED AND THE LIGHTS OUT. MOST OF THEIR TIME IS SPENT AT THEIR DESK. WE FIND THAT THESE TWO PERSONS ARE NOT IN THE USUAL SENSE, PERFORMING

SERVICES TO BUILDINGS OR GROUNDS. IN OUR OPINION THEY WOULD MORE APPROPRIATELY SHARE A COMMUNITY OF INTEREST WITH AN OFFICE AND CLERICAL UNIT. WE THEREFORE FIND THAT ETHEL KNOTT AND ESTHER ROBINSON ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

14. HAVING REGARD TO THE FOREGOING, WE FIND THAT THERE WERE 111 EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT ON THE DATE OF THE APPLICATION. THE APPLICANT HAS SUBMITTED SATISFACTORY EVIDENCE OF MEMBERSHIP FOR 59 OF THOSE PERSONS INCLUDED IN THE BARGAINING UNIT WHICH NUMBER FALLS SHORT OF THE FIFTY FIVE PER CENT REQUIREMENT FOR OUTRIGHT CERTIFICATION TO BE GRANTED BUT IS MORE THAN FIFTY PER CENT OF THOSE INCLUDED IN THE BARGAINING UNIT. IN THE USUAL COURSE OF AN APPLICATION WHERE SUCH CIRCUMSTANCES EXIST, THE BOARD WOULD ORDER THAT A REPRESENTATION VOTE BE HELD OF THE EMPLOYEES CONCERNED. IN THE INSTANT MATTER, THE APPLICANT HAS, IN ADDITION TO ITS CHARGES RELATING TO THE PETITION FILED, ALLEGED THAT THE BOARD SHOULD EXERCISE ITS DISCRETION IN FAVOUR TO CERTIFY THE UNION ACCORDING TO THE PROVISIONS OF SECTION 7(5) OF THE ACT. SINCE THE APPLICANT HAS DEMONSTRATED THAT IT HAS OVER FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS IT HAS SATISFIED THE CONDITION PRECEDENT TO THE OPERATION OF THAT SECTION.

15. ACCORDINGLY, THE BOARD WILL NOT INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE PREPARATION AND CIRCULATION OF THE PETITION, BUT WILL ENTERTAIN THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES RELATING TO WHETHER THE BOARD SHOULD EXERCISE ITS DISCRETION IN FAVOUR OF THE APPLICANT PURSUANT TO THE PROVISIONS OF SECTION 7(5) OF THE ACT, AND FOR THAT PURPOSE ONLY A FURTHER HEARING WILL BE HELD BY THE BOARD AT TORONTO.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER H. F. IRWIN: DECEMBER 8, 1969.

1. I CONCUR IN THE DECISION OF THE BOARD WITH RESPECT OF THE COMPOSITION AND DESCRIPTION OF THE BARGAINING UNIT, INCLUDING THE EXCLUSION OR INCLUSION OF THE DISPUTED PERSONS, AS SET OUT IN PARAGRAPHS 1 TO 13 THEREOF.

2. THE APPLICANT UNION HAS FILED WITH THE BOARD SUFFICIENT UNCHALLENGED APPLICATIONS FOR MEMBERSHIP TO HAVE NOT LESS THAN FORTY-FIVE PER CENT AND NOT OVER FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF APPLICATIONS AS MEMBERS.

CONSEQUENTLY, UNDER THE PROVISIONS OF SECTION 7(2) OF THE LABOUR RELATIONS ACT IT IS MANDATORY UPON THE BOARD TO DIRECT THAT A REPRESENTATION VOTE BE TAKEN SUBJECT ONLY TO THE PROVISIONS OF SECTION 7(5) OF THE ACT. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

3. HOWEVER, THE APPLICANT UNION HAS ALLEGED UNFAIR PRACTICES ON THE PART OF THE RESPONDENT EMPLOYER AND HAS REQUESTED THE BOARD TO INVOKE THE PROVISIONS OF SECTION 7(5) OF THE LABOUR RELATIONS ACT WHICH READS AS FOLLOWS:

"IF THE BOARD IS SATISFIED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE TRADE UNION AND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, THE BOARD MAY CERTIFY THE TRADE UNION AS BARGAINING AGENT WITHOUT TAKING A REPRESENTATION VOTE."

(EMPHASIS ADDED)

4. THERE WERE FILED WITH THE BOARD BY THE INTERVENER, PRIOR TO THE TERMINAL DATE, 70 INDIVIDUAL STATEMENTS OF DESIRE SIGNED BY THE EMPLOYEES CONCERNED. EACH INDIVIDUAL STATEMENT READS AS FOLLOWS:

"I, THE UNDERSIGNED, DO NOT WISH TO BE REPRESENTED BY THE BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204."

TWELVE (12) OF THESE REVOCATIONS ARE IN RESPECT OF MEMBERSHIP CARDS FILED BY THE APPLICANT. IF THESE REVOCATIONS ARE GIVEN WEIGHT, THE APPLICANT WOULD NOT HAVE MORE THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF APPLICATION AS MEMBERS AS REQUIRED UNDER THE PROVISIONS OF SECTION 7(5) OF THE ACT. UNTIL SUCH TIME AS THE BOARD INQUIRES INTO THE CIRCUMSTANCES SURROUNDING THE ORIGATION, PREPARATION AND SIGNING OF THOSE REVOCATIONS AND MAKES A FINDING AS TO WHAT WEIGHT SHOULD BE GIVEN TO THEM, I CANNOT BE SATISFIED THAT THE APPLICANT MEETS THE CONDITION PRECEDENT TO THE OPERATION OF THAT SECTION.

5. IN THIS REGARD, I REFER TO THE GORMAN ECKERT AND COMPANY CASE, O.L.R.B. MONTHLY REPORT, APRIL 1969, P. 81 WHICH WAS AN APPLICATION FOR TERMINATION OF THE BARGAINING RIGHTS OF THE INCUMBENT TRADE UNION FILED BY AN EMPLOYEE UNDER THE PROVISIONS OF SECTION 43 (2) OF THE ACT. ALTHOUGH THE BOARD MADE A FINDING THAT THE APPLICANT HAD FILED A PETITION VOLUNTARILY SIGNED BY NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE INCUMBENT TRADE UNION, THE BOARD HEARD EVIDENCE IN RESPECT OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE REVOCATIONS FILED BY THE UNION IN OPOSITION TO THE APPLICATION AND GAVE WEIGHT TO THEM. AS FOUR OF THESE REVOCATIONS WERE SIGNED BY EMPLOYEES WHO HAD ALREADY SIGNED THE PETITION FOR THE APPLICANT, THIS REDUCED THE UNCHALLENGED SIGNATURES ON THE PETITION FILED BY THE APPLICANT TO LESS THAN THE REQUIRED 50 PER CENT AND THE BOARD DISMISSED THE APPLICATION EVEN ALTHOUGH THE APPLICANT'S BEST POSITION UNDER THE PROVISIONS OF SECTION 43 OF THE ACT WAS A VOTE. WITH RESPECT, I AM AT A COMPLETE LOSS AS TO WHY THE SAME PRINCIPLE AND PROCEDURE SHOULD NOT APPLY IN THE INSTANT CASE.

6. IN ADDITION, THE PARTIES TO THIS PROCEEDING HAVE BEEN GIVEN NO OPPORTUNITY TO PRESENT ARGUMENT IN RESPECT OF THE EVIDENCE OF MEMBERSHIP OR THE BOARD'S JURISDICTION TO ENTERTAIN THE RESPONDENT'S REQUEST UNDER SECTION 7(5) AS THE BOARD IS REQUIRED TO DO UNDER THE PROVISIONS OF SECTION 75(9) OF THE ACT WHICH READS AS FOLLOWS:

"THE BOARD SHALL DETERMINE ITS OWN PRACTICE AND PROCEDURE BUT SHALL GIVE FULL OPPORTUNITY TO THE PARTIES TO ANY PROCEEDINGS TO PRESENT THEIR EVIDENCE AND TO MAKE THEIR SUBMISSIONS, AND THE BOARD MAY, SUBJECT TO THE APPROVAL OF THE LIEUTENANT GOVERNOR IN COUNCIL, MAKE RULES GOVERNING ITS PRACTICE AND PROCEDURE AND THE EXERCISE OF ITS POWERS AND PRESCRIBING SUCH FORMS AS ARE DEEMED ADVISABLE."

(EMPHASIS ADDED)

7. FOR THESE REASONS, I WOULD REFER THIS MATTER TO THE REGISTRAR TO BE RELISTED FOR CONTINUATION OF HEARING WHEN ALL OUTSTANDING ISSUES WOULD BE DEALT WITH INCLUDING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION AND REVOCATIONS OF MEMBERSHIP IN THE APPLICANT UNION AS WELL AS TO HEAR THE EVIDENCE TO BE ADDUCED AND THE REPRESENTATIONS OF THE PARTIES RELATING TO WHETHER THE BOARD HAS JURISDICTION AND, IF SO, IF IT SHOULD EXERCISE ITS DISCRETION UNDER THE PROVISIONS OF SECTION 7(5) OF THE ACT AND CERTIFY THE APPLICANT UNION WITHOUT A VOTE.

16636-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(APPLICANT) V. BYERS TRUCK AND TRAILER EQUIPMENT LIMITED
(RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: DECEMBER 8, 1969.

1. BY LETTER DATED NOVEMBER 12TH 1969, THE SOLICITOR FOR THE RESPONDENT REQUESTED CLARIFICATION OF THE DESCRIPTION OF THE BARGAINING UNIT IN THE BOARD'S DECISION DATED SEPTEMBER 17TH IN THIS MATTER. MORE PARTICULARLY THE RESPONDENT RAISED THE QUESTION AS TO WHETHER THE PERSONNEL IN THE PARTS DIVISION OF THE RESPONDENT WHO ARE INVOLVED IN SHIPPING, RECEIVING AND SALES ARE INCLUDED IN THE BARGAINING UNIT. THE APPLICANT, BY LETTER DATED NOVEMBER 24TH 1969, CONTENDED THAT THE DESCRIPTION OF THE UNIT BEING "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, OFFICE AND SALES STAFF" DOES INCLUDE SUCH PERSONS.

2. THE LIST OF THE RESPONDENT FILED IN THIS MATTER CONTAINED THE NAMES OF TEN EMPLOYEES WITH THE VARIOUS CLASSIFICATIONS OF MECHANICS AND LABOURERS. THE APPLICANT IN ITS APPLICATION ALSO ALLEGED THAT THERE WERE TEN EMPLOYEES IN THE UNIT. WHILE THE BOARD AT THE HEARING DOES NOT RECALL ANY MENTION OF THE PARTS DEPARTMENT SPECIFICALLY, THE CHAIRMAN DID STATE IN RESPONSE TO A QUESTION OF MR. BYERS, THAT TWO INDIVIDUALS WHO SELL OVER THE COUNTER ARE NOT PART OF THE SHOP CLASSIFICATION AND WOULD APPEAR TO BE EXCLUDED UNDER THE DESIGNATION OF OFFICE OR SALES STAFF, BUT THE BOARD DID NOT HAVE THEIR NAMES OR CLASSIFICATIONS. IF THESE ARE THE PERSONS TO WHOM THE RESPONDENT NOW HAS REFERENCE IN THE LETTER OF ITS SOLICITOR REFERRED TO ABOVE, THEN THE BOARD WOULD ADD A CLARITY NOTE TO THE ENDORSEMENT DATED SEPTEMBER 17TH TO THE EFFECT THAT THESE TWO INDIVIDUALS ARE NOT INCLUDED IN THE BARGAINING UNIT.

16699-69-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADIAN SILK
MANUFACTURING CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: NO ONE APPEARING FOR THE APPLICANT, H. A. BERESFORD, D.A.T. MCFARLANE AND JERRY PHILLIPS FOR THE RESPONDENT, DON ROSS, MRS. JULIE LAPERRIERE, JAMES WOOLMAN AND WILLIAM HOOKWAY FOR THE OBJECTORS.

DECISION OF THE BOARD: DECEMBER 9, 1969.

1. THIS MATTER CAME ON FOR HEARING ON DECEMBER 5, 1969 AT NORTH BAY IN ORDER THAT THE BOARD COULD INQUIRE INTO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

2. WHILE THE BOARD FOUND THAT MR. WOOLMAN AND MR. HOOKWAY WERE TRUTHFUL WITNESSES, FOR REASONS GIVEN ORALLY AT THE HEARING, THE SAME FINDING COULD NOT BE MADE WITH RESPECT TO MRS. LAPERRIERE AND MR. ROSS. IT IS QUITE APPARENT FROM ALL THE EVIDENCE THAT MR. ROSS WAS THE INSTIGATOR OF THE DOCUMENTS THAT HAD BEEN FILED IN OPPOSITION TO THIS APPLICATION. SINCE WE HAVE FOUND THAT MR. ROSS WAS NOT A TRUTHFUL WITNESS, WE CANNOT ACCEPT HIS EVIDENCE CONCERNING THE ORIGINATION OF THE DOCUMENTS THAT WERE FILED IN OPPOSITION TO THIS APPLICATION.

3. IN VIEW OF THE ABSENCE OF RELIABLE EVIDENCE CONCERNING THE ORIGINATION OF THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, WE ARE NOT PREPARED TO HOLD THAT SUCH DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

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5. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE UNIT OF EMPLOYEES DETERMINED BY THE BOARD TO BE APPROPRIATE IN THE BOARD'S DECISION OF NOVEMBER 6, 1969, IN THIS MATTER.

16740-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A.
(APPLICANT) v. POLYRESINS LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R. BARRETT FOR THE APPLICANT;
D. G. COOPER, FREDERICK B. PARKER, FREDERICK G. D. HARDSTAFF
FOR THE RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFE: DECEMBER 16, 1969.

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2. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE LABORATORY STAFF ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. HAVING REGARD TO THE DUTIES AND RESPONSIBILITIES OF THE SHIFT LEADERS AND MAINTENANCE LEADER, FRANK E. CHURCHILL, GEORGE P. DICKSON, ORVAL M. JOHNSTON AND EDWARD J. KOWALSKI, SET FORTH IN THE EXAMINER'S REPORT DATED THE 6TH DAY OF NOVEMBER, 1969, AND TO THE SUBMISSIONS OF THE PARTIES, WE FIND FOR THE REASONS GIVEN IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE 1969 AUGUST OLRB MTHLY. REP. 669 AT P 674, THAT THE AFORESAID PERSONS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND ACCORDINGLY ARE INCLUDED IN THE BARGAINING UNIT.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: DECEMBER 16, 1969.

HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES AND TO THE CONTENTS OF THE EXAMINER'S REPORT I WOULD HAVE FOUND THAT FRANK E. CHURCHILL, GEORGE P. DICKSON AND ORVAL M. JOHNSTON EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ACCORDINGLY, SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

I AM IN AGREEMENT WITH THE MAJORITY THAT EDWARD J. KOWALSKI DOES NOT EXERCISE SUCH FUNCTIONS AND SHOULD BE INCLUDED IN THE BARGAINING UNIT.

16804-69-R: LOCAL UNION 1739 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. ED WALKER'S ELECTRIC LTD. (RESPONDENT) V. EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: A. G. MATTHEWS AND L. WARNER FOR THE APPLICANT, W. S. COOK AND G. WALKER FOR THE RESPONDENT, A. SMITTEN FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: DECEMBER 8, 1969.

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3. THE RESPONDENT IN ITS REPLY AND AT THE HEARING OF THE INSTANT APPLICATION NOTED THAT THE APPLICANT HAD MADE AN APPLICATION FOR CERTIFICATION ON AUGUST 22, 1969 FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT. THE RESPONDENT FURTHER NOTED THAT AT A HEARING IN THAT CASE ON SEPTEMBER 26, 1969, SCHEDULED FOR THE PURPOSE OF INQUIRING INTO A "NON-PAY" ALLEGATION, THE REPRESENTATIVE OF THE APPLICANT ADMITTED THAT THROUGH INADVERTENCE THE MEMBERSHIP EVIDENCE DID NOT MEET THE BOARD'S REQUIREMENTS AND REQUESTED LEAVE TO WITHDRAW THE APPLICATION. THE RESPONDENT CITED THE BOARD'S DECISION DATED SEPTEMBER 26, 1969 DISMISSING THE APPLICATION. THE REPRESENTATIVE OF THE APPLICANT IN THE PRESENT APPLICATION ADMITTED ALL OF THE ABOVE FACTS.

4. IN LIGHT OF THE ABOVE CIRCUMSTANCES, THE RESPONDENT SUBMITS THAT THIS APPLICATION SHOULD BE DISMISSED AND THAT A SIX MONTH BAR BE PLACED ON THE APPLICANT MAKING AN APPLICATION FOR CERTIFICATION FOR THE UNIT OF EMPLOYEES OF THE RESPONDENT WHO ARE THE SUBJECT OF THE INSTANT APPLICATION.

5. AS STATED BY THE RESPONDENT THE APPLICANT MADE AN APPLICATION FOR CERTIFICATION FOR THE SAME UNIT OF EMPLOYEES OF THE RESPONDENT ON AUGUST 22, 1969. FOLLOWING THE ORIGINAL HEARING OF THAT APPLICATION ON SEPTEMBER 5, 1969, THE BOARD BY A DECISION OF THE SAME DATE GAVE WEIGHT TO A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION AND DIRECTED THE TAKING OF A REPRESENTATION VOTE. SUBSEQUENT TO THAT DECISION, FOLLOWING THE BOARD'S USUAL INVESTIGATION INTO AN ALLEGATION BY THE RESPONDENT THAT A PERSON ON WHOSE BEHALF THE APPLICANT HAD FILED EVIDENCE OF MEMBERSHIP HAD NOT PAID A ONE DOLLAR INITIATION FEE ON HIS OWN BEHALF, THE BOARD LISTED THE CASE FOR A FURTHER HEARING ON SEPTEMBER 26, 1969. THE PURPOSE OF THE HEARING WAS TO INQUIRE INTO "CERTAIN ALLEGED DISCREPANCIES IN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT". AS OUTLINED ABOVE, AT THE COMMENCEMENT OF THAT HEARING THE REPRESENTATIVE OF THE APPLICANT ADMITTED TO IRREGULARITIES IN THE EVIDENCE OF MEMBERSHIP WHICH THE APPLICANT HAD FILED AND SOUGHT LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT

MADE ITS REQUEST, FOLLOWING ITS USUAL PRACTICE, THE BOARD DISMISSED THE APPLICATION. IN ITS DECISION THE BOARD DREW TO THE ATTENTION OF THE PARTIES THE MATHIAS OUELLETTE CASE 56 CLLC 1555.

6. THE MATHIAS OUELLETTE CASE WAS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD HAD DIRECTED THE TAKING OF A REPRESENTATION VOTE. PRIOR TO THE TAKING OF THE VOTE, HOWEVER, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, DISMISSED THE APPLICATION. IN DOING SO THE BOARD WENT ON TO MAKE THE FOLLOWING STATEMENT AT P. 1555:

WHERE, AFTER THE TAKING OF A REPRESENTATION VOTE DIRECTED BY THE BOARD, AN APPLICATION IS DISMISSED BECAUSE NOT MORE THAN 50 PER CENTUM OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT, THE BOARD USUALLY ATTACHES TO ITS DECISION A RIDER IN THE FOLLOWING WORDS:

THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT IN RESPECT OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

IT SEEMS TO US THAT A TRADE UNION SHOULD NOT BE PERMITTED TO ANTICIPATE DEFEAT IN A REPRESENTATION VOTE AND ESCAPE THE CONSEQUENCES OF DEFEAT BY SEEKING TO WITHDRAW ITS APPLICATION AFTER SUCH A VOTE HAS BEEN DIRECTED BY THE BOARD BUT BEFORE THE VOTE HAS BEEN TAKEN. ON THE OTHER HAND, THERE HAVE BEEN A FEW CASES THE SPECIAL CIRCUMSTANCES OF WHICH HAVE LED THE BOARD TO REFRAIN FROM IMPOSING A BAR UPON AN UNSUCCESSFUL APPLICANT EVEN AFTER A REPRESENTATION VOTE HAS BEEN TAKEN. SIMILAR CIRCUMSTANCES MAY EXIST IN A CASE IN WHICH A UNION SEEKS LEAVE TO WITHDRAW AFTER THE DIRECTION FOR THE VOTE HAS BEEN ISSUED BUT BEFORE IT IS TAKEN, BUT THE EXISTENCE OF THOSE CIRCUMSTANCES MIGHT COME TO LIGHT ONLY IF THE BOARD WERE TO HOLD A HEARING ON THE REQUEST FOR LEAVE TO WITHDRAW AN APPLICATION. IN OUR EXPERIENCE, WE HAVE FOUND THAT A NEW APPLICATION BY A UNION WHICH HAS MADE SUCH A REQUEST IS RARELY FILED WITHIN THE SIX MONTH PERIOD. CONSEQUENTLY, IN ORDER TO AVOID THE NECESSITY OF A FURTHER HEARING IN EACH CASE WHERE THERE MAY BE A REQUEST TO

WITHDRAW AT THE STAGE OF THE PROCEEDINGS INDICATED ABOVE, THE BOARD DOES NOT PROPOSE TO IMPOSE AN AUTOMATIC SIX MONTHS' BAR, AS HAS BEEN THE PRACTICE IN CASES WHERE A VOTE HAS BEEN TAKEN, BUT IF THE APPLICANT UNION FILES A NEW APPLICATION AFFECTING THE SAME EMPLOYEES WITHIN SIX MONTHS FROM THE DATE WHEN THE APPLICATION IS DISMISSED, THE ONUS WILL LIE ON THE APPLICANT TO SHOW THAT SPECIAL CIRCUMSTANCES DO EXIST WHICH WOULD WARRANT THE NEW APPLICATION BEING ENTERTAINED AT THAT TIME. TO AVOID ANY MISUNDERSTANDING, THE PRINCIPLE OF THIS CASE RELATES TO SITUATIONS IN WHICH A VOTE HAS BEEN DIRECTED AND IN WHICH THE APPLICANT UNION APPLIES FOR LEAVE TO WITHDRAW ITS APPLICATION BEFORE THE VOTE IS TAKEN.

7. IN OUR VIEW, THE MATHIAS OUELLETTE DECISION STANDS FOR THE PROPOSITION THAT A TRADE UNION THAT SEEKS TO WITHDRAW A CERTIFICATION APPLICATION AFTER THE BOARD HAS DIRECTED THE TAKING OF A REPRESENTATION VOTE BUT BEFORE THE VOTE IS TAKEN, AND IS MOTIVATED TO DO SO BECAUSE IT ANTICIPATES A DEFEAT IN THE VOTE, SHOULD NOT BE PERMITTED TO ESCAPE THE CONSEQUENCES OF AN ACTUAL LOSS OF THE VOTE, NAMELY THE IMPOSITION OF A SIX MONTHS' BAR ON THE MAKING OF A SUBSEQUENT APPLICATION FOR THE SAME EMPLOYEES.

8. IN THE INSTANT CASE, BASED ON THE EVIDENCE BEFORE US, WE FIND THAT THE APPLICANT WAS NOT MOTIVATED TO WITHDRAW ITS APPLICATION BECAUSE IT EXPECTED A DEFEAT IN THE REPRESENTATION VOTE DIRECTED BY THE BOARD. RATHER, THE APPLICANT WAS PROMPTED TO SEEK LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION BECAUSE IT WAS AWARE THAT THE EVIDENCE OF MEMBERSHIP WHICH IT HAD FILED IN SUPPORT OF ITS APPLICATION WOULD NOT MEET THE BOARD'S REQUIREMENTS. IN OTHER WORDS, WE DO NOT FIND THE CIRCUMSTANCES OF THE INSTANT CASE ANALOGOUS TO THOSE IN THE MATHIAS OUELLETTE CASE NOR DOES THE PRINCIPLE SET OUT IN THAT CASE APPLY TO THE FACTS OF THE CASE BEFORE US.

9. WE WOULD POINT OUT THAT HAD THE BOARD, IN FACT, CONDUCTED ITS INQUIRY INTO THE ALLEGED DISCREPANCIES IN THE EVIDENCE SUBMITTED BY THE APPLICANT AND HAD FOUND ALL OR SOME OF THE EVIDENCE UNACCEPTABLE, THE MOST THE BOARD WOULD HAVE DONE WOULD BE TO DISMISS THE APPLICATION. THE BOARD, FOLLOWING ITS REGULAR PRACTICE IN THAT SITUATION, WOULD NOT HAVE IMPOSED A BAR AS TO THE TIME WITHIN WHICH THE APPLICANT COULD MAKE ANOTHER APPLICATION FOR CERTIFICATION FOR THE SAME EMPLOYEES. WE WOULD MENTION THAT IN THE EARLIER APPLICATION BY THE PRESENT APPLICANT WHILE ALLEGATIONS WERE MADE, NO FINDINGS WERE MADE BY THE BOARD

WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP FILED WITH THAT APPLICATION. SURELY THE APPLICANT CANNOT BE PLACED IN ANY WORSE POSITION THAN IF THE ALLEGATIONS HAD BEEN PROVEN IN EVIDENCE. STATED ANOTHER WAY, SINCE THE BOARD DOES NOT IMPOSE A BAR IN THE LATTER CIRCUMSTANCES IT WOULD BE ILLOGICAL AND PREJUDICIAL TO IMPOSE A BAR IN THE PRESENT SITUATION.

10. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD IS PREPARED TO ENTERTAIN THE INSTANT APPLICATION. THE REGISTRAR ACCORDINGLY IS DIRECTED TO RELIST THE APPLICATION FOR HEARING FOR THE PURPOSE OF DEALING WITH ALL OUTSTANDING ISSUES.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: DECEMBER 8, 1969.

THE APPLICANT MADE APPLICATION FOR CERTIFICATION BEFORE THE BOARD ON AUGUST 22, 1969.

BY DECISION DATED SEPTEMBER 5TH, 1969, THAT PANEL OF THE BOARD DIRECTED THAT A REPRESENTATION VOTE SHOULD BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT.

BY LETTER DATED SEPTEMBER 8TH, 1969, THE SOLICITORS FOR THE RESPONDENT MADE THE ALLEGATION THAT A NAMED EMPLOYEE OF THE COMPANY DID NOT PAY ANY MONEY WHEN HE SIGNED A MEMBERSHIP CARD IN THE APPLICANT UNION AND REQUESTED THE BOARD TO MAKE ITS NORMAL INVESTIGATION IN THE MATTER.

THE BOARD CONDUCTED A PRELIMINARY INVESTIGATION REGARDING CERTAIN DISCREPANCIES CONCERNING THE SIGNING OF AN APPLICATION FOR MEMBERSHIP CARD AND THE PAYMENT OF AN INITIATION FEE TO THE APPLICANT BY ONE OF THE EMPLOYEES OF THE RESPONDENT.

AS A CONSEQUENCE THEREOF, THE BOARD INFORMED THE PARTIES THAT IT INTENDED TO CONDUCT A HEARING IN THIS CASE, "AT WHICH INQUIRY WILL BE MADE INTO THE CIRCUMSTANCES UNDER WHICH THE INITIATION FEE RELATING TO THE APPLICATION FOR MEMBERSHIP WAS ALLEGED TO HAVE BEEN PAID BY (NAME INSERTED). DID NOT IN FACT PAY ANY MONEY ON HIS OWN BEHALF."

CERTAIN PERSONS WERE SUMMONED TO TESTIFY AT THE HEARING. THE REPRESENTATION VOTE DIRECTED BY THE BOARD ON SEPTEMBER 5TH, 1969 WAS DEFERRED UNTIL AFTER THE HEARING.

A FORMAL NOTICE OF HEARING TO INQUIRE INTO CERTAIN ALLEGED DISCREPANCIES IN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT WAS ISSUED, THE HEARING TO TAKE PLACE ON SEPTEMBER 26TH, 1969.

ON SEPTEMBER 26, 1969, THE BOARD ISSUED THE FOLLOWING DECISION:

"1. AT THE COMMENCEMENT OF THE SECOND HEARING IN THIS MATTER, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. HAVING REGARD TO THE STAGE AT WHICH THE APPLICANT HAS MADE ITS REQUEST, THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSES THE APPLICATION.

2. THE ATTENTION OF THE PARTIES IS DRAWN TO THE MATHIAS OUELLETTE CASE, 56 CLLC 1555."

IT IS WITH THIS BACKGROUND THAT THE APPLICANT IN THE INSTANT CASE MADE APPLICATION FOR THE SAME UNIT OF EMPLOYEES ON OCTOBER 2, 1969, APPROXIMATELY ONE WEEK AFTER THE DISMISSAL OF ITS ORIGINAL APPLICATION BY THE BOARD.

THE MAJORITY OF THE BOARD HAS CORRECTLY RECORDED THE MATERIAL PORTIONS OF THE MATHIAS OUELLETTE CASE, 56 CLLC 1555.

IN PARAGRAPH 7 OF ITS DECISION, THE MAJORITY HAS STATED:-

"IN OUR VIEW, THE MATHIAS OUELLETTE DECISION STANDS FOR THE PROPOSITION THAT A TRADE UNION THAT SEEKS TO WITHDRAW A CERTIFICATION APPLICATION AFTER THE BOARD HAS DIRECTED THE TAKING OF A REPRESENTATION VOTE BUT BEFORE THE VOTE IS TAKEN, AND IS MOTIVATED TO DO SO BECAUSE IT ANTICIPATES A DEFEAT IN THE VOTE, SHOULD NOT BE PERMITTED TO ESCAPE THE CONSEQUENCES OF AN ACTUAL LOSS OF THE VOTE, NAMELY THE IMPOSITION OF A SIX MONTHS' BAR ON THE MAKING OF A SUBSEQUENT APPLICATION FOR THE SAME EMPLOYEES."

(EMPHASIS ADDED)

WHILE I AM PREPARED TO CONCEDE THAT IT IS POSSIBLE TO EXTRACT THAT PROPOSITION FROM THE MATHIAS OUELLETTE DECISION, I AM OF THE OPINION THAT IT IS EQUALLY POSSIBLE TO EXTRACT FROM THE DECISION A RATIO DECIDENDI WHICH IS NOT NEARLY SO CONFINING AS TO BE LIMITED TO THE SITUATION WHERE THE WITHDRAWAL IN THE FACE OF A REPRESENTATION VOTE IS MOTIVATED ONLY BECAUSE THE UNION ANTICIPATES A DEFEAT IN SUCH VOTE.

IT HAS ALSO BEEN BY EXPERIENCE THAT THE BOARD, IN IMPOSING THE MATHIAS OUELLETTE PRINCIPLE TO ITS ENDORSEMENTS, HAS EITHER EXTENDED ITS POLICY TO REQUIRE THE APPLICANT TO SHOW THAT SPECIAL CIRCUMSTANCES DO EXIST WHICH WOULD WARRANT A NEW APPLICATION BEING ENTERTAINED WITHIN A SIX MONTH PERIOD (WITHOUT CONFINING IT TO APPLICATIONS MADE WITHIN SIX MONTHS AFTER A WITHDRAWAL IN THE FACE OF AN ANTICIPATED DEFEAT IN A REPRESENTATION VOTE) OR IN THE ALTERNATIVE, THE BOARD HAS DRAWN A DIFFERENT PROPOSITION FROM THE FACTS OF MATHIAS OUELLETTE THAN HAS THE MAJORITY IN THE INSTANT CASE.

SEE OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION AND TRW ELECTRONICS COMPONENTS LIMITED, BOARD FILE No. 15304-68-R.

INDEED, IT DEFIES MY LOGIC THAT THE MAJORITY, WHILE POSSESSED OF THE FACTS THAT THE WITHDRAWAL OF THE ORIGINAL APPLICATION WAS MADE ON THE DATE OF A HEARING INTO ALLEGATIONS OF NON-PAY AND AN ADMISSION BY THE UNION THAT IT WAS WITHDRAWING BECAUSE ITS MEMBERSHIP EVIDENCE DID NOT MEET THE BOARD'S REQUIREMENTS, SHOULD HAVE MADE ANY REFERENCE TO THE MATHIAS OUELLETTE DECISION IN ITS DISMISSAL OF THE ORIGINAL APPLICATION, IF THEIR INTERPRETATION OF MATHIAS OUELLETTE AND THE BOARD'S POLICY IS ACCURATE. CERTAINLY THERE WERE NO NEW FACTS PRESENTED AT THE HEARING OF THE SECOND APPLICATION BY WAY OF SHOWING "SPECIAL CIRCUMSTANCES" (AS REFERRED TO IN THE MATHIAS OUELLETTE DECISION) WHICH WERE NOT PRESENTED AT THE TIME OF THE DISMISSAL OF THE ORIGINAL APPLICATION.

IT IS ALSO A MATTER OF RECORD THAT THE BOARD HAS, IN THE PAST, PLACED A FAR STRICTER VIEW ON WITHDRAWALS IN THE FACE OF ALLEGATIONS OF FRAUD UNDER SIMILAR CIRCUMSTANCES THAN THE MAJORITY IS DOING IN THE INSTANT CASE.

SEE IBEW AND HYDRO ELECTRIC COMMISSION OF HAMILTON, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59 ¶16,120.

IN THAT CASE, IN JANUARY LOCAL 138 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS FILED AN APPLICATION FOR CERTIFICATION. IN MARCH, AT THE HEARING INTO ALLEGATIONS OF FRAUD, THE APPLICANT SOUGHT LEAVE TO WITHDRAW ITS APPLICATION, AND THE BOARD DISMISSED THE APPLICATION FOLLOWING ITS USUAL PRACTICE.

IN JUNE OF THE SAME YEAR, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS FILED A NEW APPLICATION FOR CERTIFICATION, I.E. AN APPLICATION BY A DIFFERENT APPLICANT AND WITHOUT USING THE DOCUMENTS THAT HAD BEEN FILED IN SUPPORT OF THE EARLIER APPLICATION.

PROFESSOR FINKELMAN, ON BEHALF OF THE BOARD, SAID:-

"THERE STILL REMAINS THE QUESTION AS TO THE WEIGHT TO BE GIVEN TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT UNION. ALTHOUGH THE APPLICANT IN THE INSTANT CASE IS THE INTERNATIONAL ITSELF, WHEREAS THE APPLICANT IN THE EARLIER CASE WAS LOCAL 138 OF THE INTERNATIONAL, AND ALTHOUGH THE EVIDENCE OF MEMBERSHIP SUBMITTED IN THE INSTANT CASE IS FRESH EVIDENCE AND NOT MERELY A REFILEING OF THE EVIDENCE SUBMITTED IN THE EARLIER CASE, NEVERTHELESS, IN VIEW OF THE CIRCUMSTANCES IN WHICH THE REQUEST FOR WITHDRAWAL IN THE EARLIER CASE WAS MADE, THERE IS A CLOUD ON THE DOCUMENTARY EVIDENCE IN THIS CASE WHICH CAN ONLY BE REMOVED BY A REPRESENTATION VOTE, ASSUMING OF COURSE THAT THE APPLICANT UNION HAS THE REQUISITE SUPPORT TO THAT END.

IN THE PRESENT CASE, HAVING REGARD TO THE FACT THAT IT IS THE SAME UNION APPLYING, AND ALSO TO THE FACT THAT THE SECOND APPLICATION WAS MADE APPROXIMATELY ONE WEEK AFTER THE DISMISSAL BY THE BOARD OF THE EARLIER APPLICATION, AND BECAUSE OF THE ABSENCE OF ANY SPECIAL CIRCUMSTANCES INVOLVED WHICH WOULD EXPLAIN THE REQUEST FOR WITHDRAWAL OF THE EARLIER APPLICATION, I WOULD HAVE DISMISSED THE INSTANT APPLICATION AND IMPOSED A SIX MONTH BAR ON ANY RE-APPLICATION.

IN CONCLUSION, I MUST SAY THAT I FIND IT MOST ALARMING THAT THE BOARD WOULD IMPOSE A SIX MONTH BAR ON AN APPLICANT UNION WHO WITHDRAWS BECAUSE OF AN ANTICIPATED DEFEAT IN A REPRESENTATION VOTE, BUT REFUSES TO IMPOSE SUCH A BAR ON AN APPLICANT UNION WHO WITHDRAWS IN THE FACE OF AN INVESTIGATION BY THE BOARD INTO ALLEGED FRAUD.

TO ME THE LATTER IS FAR MORE SERIOUS AND EVERYTHING SHOULD BE DONE BY THIS BOARD TO RECORD ITS COMPLETE DISAPPROVAL OF ANY SUCH PRACTICE.

16810-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. SPAR AEROSPACE PRODUCTS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: DECEMBER 16, 1969.

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2. THE APPLICANT REPRESENTS A BARGAINING UNIT OF OFFICE EMPLOYEES DESCRIBED IN A SUBSISTING COLLECTIVE AGREEMENT BETWEEN IT AND THE RESPONDENT. IN THE PRESENT APPLICATION, IT SEEKS CERTIFICATION AS BARGAINING AGENT FOR WHAT IS COMMONLY DESCRIBED AS A "TAG END" UNIT OF OFFICE EMPLOYEES WHO ARE NOT COVERED BY THAT AGREEMENT.

3. THE RESPONDENT MAINTAINS THAT A TAG END UNIT IS NOT APPROPRIATE IN THE CIRCUMSTANCES AND ARGUES THAT EMPLOYEES CONCERNED IN THIS APPLICATION PROPERLY BELONG WITH AND SHOULD BE INCORPORATED INTO THE EXISTING BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT. THE COMPANY CONTENDS THAT THIS RESULT CAN ONLY BE ACHIEVED BY NEGOTIATION BETWEEN THE PARTIES AND AMENDMENT TO THE RECOGNITION CLAUSE OF THE AGREEMENT, PROVIDED THE PARTIES CAN REACH AN UNDERSTANDING ON THE MATTER.

4. IT APPEARS TO THE BOARD THAT IT IS QUITE BEYOND QUESTION THAT IT IS WITHIN THE COMPETENCE OF THE PARTIES TO NEGOTIATE AN ENLARGEMENT OF THE SCOPE OF THE COLLECTIVE AGREEMENT. THE FACT THAT THE FOREGOING PROCEDURE MIGHT BE ATTEMPTED, HOWEVER, DOES NOT PRECLUDE THE APPLICANT FROM PURSUING ITS PURPOSE BY MEANS OF AN APPLICATION TO THE BOARD FOR A TAG END UNIT AS IT HAS CHOSEN TO DO IN THIS INSTANCE.

5. THE BOARD IS NOT EMPOWERED IN THE ACT, IN THE CIRCUMSTANCES OF THE PRESENT CASE, TO AMEND THE EXISTING COLLECTIVE AGREEMENT AND ALTER THE BARGAINING UNIT DESCRIBED THEREIN. IT DOES, HOWEVER, HAVE THE POWER TO FIND A TAG END UNIT SUCH AS THE ONE PRESENTLY SOUGHT BY THE APPLICANT TO BE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING AND HAS DONE SO IN NUMEROUS APPLICATIONS. IN THE PRESENT CASE, HAVING REGARD TO THE FOREGOING AND THE SUBMISSIONS OF COUNSEL FOR THE PARTIES, THE BOARD FINDS A TAG END UNIT TO BE AN APPROPRIATE UNIT IN THE CIRCUMSTANCES.

6. THE PARTIES MET WITH THE EXAMINER APPOINTED BY THE BOARD IN ITS DECISION OF NOVEMBER 6, 1969 AND AGREED UPON THE DESCRIPTION OF A "TAG END" UNIT IN THE EVENT THAT THE BOARD FOUND SUCH UNIT TO BE APPROPRIATE IN THE CIRCUMSTANCES. AT THE SAME TIME, THE PARTIES AGREED UPON THE PERSONS AND CLASSIFICATIONS FALLING WITHIN THE "TAG END" UNIT, AGAIN, SHOULD IT BE FOUND TO BE APPROPRIATE. THE AGREED UPON LIST INCLUDES SIX NAMES WHICH DID NOT APPEAR ON THE SCHEDULES FILED BY THE RESPONDENT. IT IS NOT CLEAR WHETHER THESE ADDITIONAL PEOPLE WERE AT WORK ON THE DATE THE APPLICATION WAS MADE.

7. THE BOARD THEREFORE FINDS, HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT ALL OFFICE, CLERICAL, AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT MALTON OR METROPOLITAN TORONTO, SAVE AND EXCEPT SECTION HEADS, PERSONS ABOVE THE RANK OF SECTION HEAD, ONE SECRETARY TO EACH DEPARTMENT MANAGER OR TO A PERSON OF HIGHER STATUS, ENGINEERS, REGISTERED NURSES, TECHNICAL WRITERS, FIELD SERVICE REPRESENTATIVES, CONTRACT ADMINISTRATORS, LIAISON OFFICERS, TELETYPE OPERATORS, CLERKS ASSIGNED TO THE CONFIDENTIAL PAYROLL (COVERING PERSONS NOT EMPLOYED WITHIN THE SCOPE OF ANY BARGAINING UNIT), ALL EMPLOYEES ENGAGED IN THE INDUSTRIAL RELATIONS DEPARTMENT INCLUDING PERSONNEL ENGAGED IN PLANT SECURITY AND PROTECTION, AND PERSONS COVERED BY EXISTING COLLECTIVE AGREEMENTS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD FINDS ON THE EVIDENCE THAT THE PETITION FILED ON BEHALF OF THE GROUP OF EMPLOYEES (OBJECTORS) SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE ON THE BASIS OF THE ORIGINAL LISTS. IT SHOULD BE ADDED THAT IF IT BE ASSUMED THAT ANY OR ALL THE PERSONS ADDED BY THE PARTIES IN THE AGREEMENT MADE BEFORE THE EXAMINER WERE IN THE UNIT AS AT THE 3RD DAY OF OCTOBER, 1969 THE DATE OF APPLICATION, THE APPLICANT'S MEMBERSHIP EVIDENCE IS NUMERICALLY SUCH AS TO PRESERVE FOR IT A VOTE POSITION.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 14, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

16811-69-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. AUDIO TRANSFORMER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: R. RUSSELL AND H. DOPEL FOR THE APPLICANT; G. A. MACKAY, Q.C., AND J. G. HUTCHISON FOR THE RESPONDENT; P. H. SIMS FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER E. BOYER: DECEMBER 3, 1969.

1. THERE WERE FILED WITH THE BOARD 69 INDIVIDUAL STATEMENTS OF OBJECTION OR PETITIONS PURPORTING TO CERTIFY THAT THE SIGNATORY TO EACH PETITION DID NOT WISH TO BE REPRESENTED BY THE U.E. THE SIGNATURE ON EACH STATEMENT OR PETITION WAS WITNESSED BY ONE OF FOUR EMPLOYEES WHO APPEARED BEFORE THE BOARD AND TESTIFIED WITH RESPECT TO THE EXECUTION OF THE RESPECTIVE PETITIONS WHICH THEY SIGNED AS WITNESSES.

2. PETITIONS TO BE EFFECTIVE MUST CARRY, AS ONE OF THE REQUIREMENTS OF RELEVANCY, THE SIGNATURES OF EMPLOYEES WHO HAD PREVIOUSLY SIGNED A UNION CARD AND PAID A MEMBERSHIP FEE TO THE UNION. A PETITION IS, THEREFORE, IN EFFECT, AN ATTEMPT AT REVOCATION OR CANCELLATION OF HIS APPLICATION FOR MEMBERSHIP IN THE UNION PREVIOUSLY MADE BY A PETITIONER. IN THE PRESENT CASE, EMPLOYEES WHO HAD SIGNED UNION CARDS ALSO SIGNED PETITIONS IN NUMBERS SUFFICIENT TO REDUCE THE UNQUALIFIED NUMBER OF MEMBERSHIP CARDS BELOW THAT REQUIRED FOR OUTRIGHT CERTIFICATION PROVIDED, OF COURSE, THAT THE PETITIONS ARE OTHERWISE VALID. THE LATTER SITUATION, REFERRED TO AS THE "OVERLAP", IS A FURTHER REQUIREMENT OF RELEVANCY WITH RESPECT TO PETITIONS. BOTH OF THE PRELIMINARY REQUIREMENTS HAVING BEEN FULFILLED IN THIS INSTANCE THE BOARD MADE ITS CUSTOMARY INQUIRY INTO THE ORIGINATION OF THE PETITIONS AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED IN ORDER TO DETERMINE THEIR VALIDITY.

3. IN ITS INQUIRY, THE BOARD SEEKS ASSURANCE THAT THE ALTERATION OF THE ORIGINAL INTENT OF THE EMPLOYEES HAS NOT COME ABOUT AS THE RESULT OF ANY INTERFERENCE OR INFLUENCE ON THE PART OF MANAGEMENT AND THAT IT REPRESENTS A VOLUNTARY CHANGE OF MIND WITH RESPECT TO UNION MEMBERSHIP ON THE PART OF THE EMPLOYEES.

4. EILEEN AYERS TESTIFIED THAT SHE ORIGINATED THE PETITION AFTER DISCUSSION WITH SEVERAL FELLOW EMPLOYEES. SHE STATED THAT SHE SELECTED A SOLICITOR'S NAME FROM THE YELLOW PAGES OF THE TELEPHONE BOOK AND CONSULTED HIM WITH RESPECT TO THE MATTER. THE FORMS FOR THE PETITIONS WERE PREPARED IN THE SOLICITOR'S OFFICE AND WERE DISTRIBUTED BY HER AMONG THE THREE OTHER EMPLOYEES WHOSE NAMES APPEAR AS WITNESSES ON THE PETITIONS AND WHO ALSO TESTIFIED BEFORE THE BOARD.

5. AS HAS ALREADY BEEN INDICATED, THE CONCERN OF THE BOARD IN ITS INQUIRY INTO THE ORIGATION AND CIRCULATION OF THE PETITION IS TO ASCERTAIN WHETHER THE DOCUMENT OR DOCUMENTS AS IS THE CASE HERE, REPRESENT THE TRUE WISHES OF THE EMPLOYEES FREE FROM ANY INTERFERENCE OR INFLUENCE BY MANAGEMENT WHICH WOULD DEPRIVE THEM OF FREEDOM OF CHOICE IN THE MATTER. AYERS WAS ACCORDINGLY ASKED BY THE BOARD IF SHE HAD HAD ANY DISCUSSIONS WITH MANAGEMENT CONCERNING THE PETITION, AND SHE REPLIED THAT SHE HAD NOT.

6. A WITNESS, SANDRA SCHNARR, WHO WAS CALLED BY THE APPLICANT TESTIFIED THAT ON OCTOBER 8TH, HER DUTIES REQUIRED HER TO PUT SOME WASTE MATERIAL IN THE GARBAGE AT THE BACK OF THE PLANT. SHE STATED THAT SHE SAW AYERS AND BILL MCNAMARA, PLANT MANAGER, TALKING TOGETHER. SHE STATED THAT SHE HEARD AYERS SAY TO MCNAMARA "THERE IS THE GIRL NOW - SHE MIGHT AS WELL SIGN IT". SHE SAID THAT AYERS THEN CALLED HER OVER AND SAID THAT SHE MIGHT AS WELL SIGN THE PETITION AS IT WOULD ONLY TAKE A MINUTE. SHE SAID SHE TOLD AYERS SHE HAD TO GO INTO THE FACTORY FOR A MINUTE AND THAT AYERS SAID SHE WAS SUPPOSED TO SIGN IT THEN. SCHNARR TESTIFIED THAT SHE HAD BEEN TALKING TO AYERS EARLIER THAT MORNING AND HAD INDICATED SHE WANTED TO SIGN THE PETITION. SHE STATED THAT MCNAMARA WAS STANDING BESIDE AYERS WHEN THE LATTER TOOK A PETITION OUT OF HER PURSE, BUT THAT HE LEFT BEFORE SHE SIGNED IT. SHE, SCHNARR, HAD NO DISCUSSION OF THE MATTER WITH MCNAMARA. ON SCHNARR'S INSTRUCTIONS AYERS TORE UP THE PETITION AND, OF COURSE, IT HAS NO SIGNIFICANCE AS SUCH IN THESE PROCEEDINGS. THE SIGNIFICANCE OF THIS INCIDENT, ASSUMING IT TOOK PLACE AS RELATED, WOULD BE IN THE CONVERSATION ALLEGED TO HAVE TAKEN PLACE BETWEEN AYERS AND MCNAMARA AND THE INFERENCES, IF ANY, TO BE DRAWN THEREFROM.

7. AYERS AND MCNAMARA BOTH AGREE THAT THEY WERE IN THE AREA DESCRIBED BY SCHNARR, ON THE 8TH OF OCTOBER. AYERS AGREES WITH THAT PORTION OF THE TESTIMONY HAVING TO DO WITH THE SIGNING AND THEN THE DESTRUCTION OF THE PETITION FORM. SHE DENIES, HOWEVER, THAT SHE HAD ANY CONVERSATION WITH MCNAMARA ALTHOUGH SHE DID SAY HE WAS PASSING BY AT THE TIME. MCNAMARA STATED AT FIRST THAT HE COULD NOT RECALL SEEING SCHNARR, BUT REMEMBERED SEEING AYERS ON A RAMP AT THE REAR OF THE PLANT. HE THEN SAID HE BELIEVED

SHE WAS THERE TALKING TO EILEEN AYERS. HE ADDED THAT HE RECOLLECTED SEEING SOME GIRL RUNNING DOWN THE RAMP TOWARDS AYERS AT THE TIME IN QUESTION, BUT DENIED HAVING ANY CONVERSATION WITH EITHER OF THEM. THERE IS THEREFORE A DIRECT CONFLICT OF EVIDENCE BETWEEN SCHNARR ON THE ONE HAND AND AYERS AND McNAMARA ON THE OTHER, WITH RESPECT TO THE ALLEGED CONVERSATION BETWEEN THE LATTER TWO.

8. ACCEPTANCE OF SCHNARR'S ACCOUNT OF THE ALLEGED MEETING BETWEEN McNAMARA AND AYERS AND THE CONVERSATION SHE SAYS SHE HEARD INVITES THE INFERENCE THAT THE LATTER TWO WERE DISCUSSING THE PETITION. THE REMARK (ASSUMING IT TO HAVE BEEN MADE) OF AYERS TO McNAMARA "THERE IS THE GIRL NOW" FOLLOWED BY AYERS' REQUEST TO SCHNARR TO SIGN THE PETITION, WOULD RENDER SUCH A CONCLUSION INESCAPABLE. THIS WOULD, OF COURSE, DETROY AYERS' TESTIMONY IN WHICH SHE SAID THAT SHE HAD NOT DISCUSSED THE MATTER OF THE PETITION WITH MANAGEMENT.

9. IT IS TO BE NOTED THAT DURING HER EXAMINATION BY THE BOARD, AYERS TESTIFIED THAT ON OCTOBER THE 14TH, SHE LEFT THE PLANT EARLY TO RETURN THE PETITION FORMS TO HER LAWYER. SHE WAS ASKED IF SHE SOUGHT PERMISSION TO LEAVE EARLY. SHE REPLIED QUITE DEFINITELY AND UNEQUIVOCALLY THAT SHE HAD NOT - THAT SHE JUST TOOK AN HOUR OFF. LATER IN THE PROCEEDINGS, WHEN SHE WAS RECALLED FOR CROSS-EXAMINATION, SHE TESTIFIED THAT SHE HAD ASKED FOR AND RECEIVED PERMISSION FROM HER FOREMAN, WHOM SHE NAMED, TO LEAVE EARLY. WHETHER THE WITNESS GOT PERMISSION OR NOT, IS OF LITTLE CONSEQUENCE. WHAT IS OF CONCERN IS THE COMPLETE CONTRADICTION IN HER TESTIMONY. IT IS SIGNIFICANT TO NOTE THAT THIS CAME ABOUT ONLY AFTER SHE HAD HEARD McNAMARA TESTIFY THAT IT WAS NECESSARY TO OBTAIN PERMISSION TO LEAVE EARLY.

10. IN ATTEMPTING TO RESOLVE THE ABOVE CONFLICT OF TESTIMONY, WE BELIEVE IT IS PROPER AND NECESSARY TO GIVE CONSIDERATION TO THE QUESTION OF THE PROBABILITY OF AN EMPLOYEE SUCH AS SCHNARR CONCOTING THE STORY DIRECTLY INVOLVING, AS IT DID, THE PLANT MANAGER, WHICH SHE TOLD THE BOARD. THERE WAS NOTHING WHATEVER TO INDICATE THAT THE WITNESS WAS MOTIVATED BY SELF INTEREST, INDEED, IN THE CONTEXT IT IS DIFFICULT TO IMAGINE ANY BENEFIT THAT MIGHT POSSIBLY ACCRUE TO HER BY REASON OF THE STORY. ON THE CONTRARY, HER ACTIONS COULD POSSIBLY JEOPARDIZE HER POSITION WITH THE COMPANY BY IMPLICATING THE PLANT MANAGER IN THE PROMOTION OF THE PETITION. THERE WAS NO SUGGESTION MADE THAT SCHNARR WAS A UNION ZEALOT, NOR WAS THERE ANYTHING ABOUT HER Demeanour OR TESTIMONY THAT REMOTELY HINTED AT ANY PARTISAN BIAS IN HER EVIDENCE.

11. EVIDENCE WAS ALSO OFFERED BY MARY STOCKMAN, AN EMPLOYEE WHO HAS BEEN WITH THE RESPONDENT FOR SOME FOUR YEARS. MISS STOCKMAN STATED THAT ON OCTOBER 13TH, 1969, VIOLA KAVELMAN HAD

PHONED HER AND ASKED HER TO SIGN A PETITION FORM IN OPPOSITION TO THE UNION. SHE SAID THAT KAVELMAN SAID TO HER THAT SHE OWED A FAVOUR TO BILL McNAMARA AND DID NOT OWE ANY OBLIGATION TO WILMA KELLER. THE REFERENCE TO WILMA KELLER WAS NOT EXPLAINED, BUT SHE WOULD APPEAR FROM THE FOREGOING TO HAVE INTERESTS CONTRARY, IN KAVELMAN'S OPINION ANY WAY, TO THOSE OF McNAMARA, THE PLANT MANAGER, AT LEAST INSOFAR AS THE EXECUTION OF A PETITION WAS CONCERNED.

12. STOCKMAN STATED THAT WHEN KAVELMAN CALLED HER ON THE PHONE, SHE ASKED HER HOW SHE HAD OBTAINED THE TELEPHONE NUMBER. SHE SAID KAVELMAN TOLD HER THAT SHE HAD OBTAINED IT FROM DORIS BLAIN, PERSONNEL MANAGER, AND PHYLLIS McNAMARA WHO WORKS IN THE OFFICE. KAVELMAN, BLAIN AND BILL McNAMARA DENIED ASKING FOR, IN THE CASE OF KAVELMAN, AND GIVING, IN THE CASE OF McNAMARA AND BLAIN, ANY EMPLOYEES' TELEPHONE NUMBER. PHYLLIS McNAMARA DID NOT TESTIFY. KAVELMAN STATED SHE GOT THE NUMBER FROM THE TELEPHONE DIRECTORY. SHE SAID SHE COULD NOT RECOLLECT IF STOCKMAN ASKED HER HOW SHE GOT THE NUMBER.

13. EVIDENCE WAS GIVEN THAT STOCKMAN'S MOTHER HAD DIED WITHIN A FEW DAYS PRIOR TO THE INCIDENTS UNDER REVIEW AND THAT McNAMARA HAD HELPED STOCKMAN IN ARRANGING FOR PALL BEARERS AND OTHER MATTERS HAVING TO DO WITH HER MOTHER'S FUNERAL. STOCKMAN CONCLUDED, WE THINK REASONABLY, THAT IT WAS TO THIS THAT KAVELMAN HAD REFERENCE IN SUGGESTING THAT SHE OWED McNAMARA A FAVOUR

14. STOCKMAN TESTIFIED THAT SHE TOLD KAVELMAN THAT SHE WOULD NOT SIGN THE PETITION THAT NIGHT, BUT ARRANGED TO MEET THE FOLLOWING MORNING IN THE WASHROOM AND SIGN IT. THIS MEETING DID NOT TAKE PLACE. IN THE AFTERNOON OF THAT DAY, OCTOBER 14TH, 1969, STOCKMAN WAS TOLD BY EILEEN AYERS THAT SHE WAS WANTED IN THE OFFICE. SHE STATED THAT WHEN SHE WENT TO THE OFFICE, DORIS BLAIN, PERSONNEL MANAGER OF THE RESPONDENT, McNAMARA AND VIOLA KAVELMAN WERE ALL PRESENT. STOCKMAN SAID THAT McNAMARA TOLD HER HE WANTED HER TO DO HIM A FAVOUR AND SIGN A PETITION. SHE SAID HE TOLD HER SHE WOULD HAVE TO SIGN THE PAPER OR THEY WOULD HAVE TO LET HER GO. SHE ALSO TESTIFIED THAT KAVELMAN HAD SAID THAT THERE WAS GOING TO BE A LAY-OFF AND THAT PEOPLE WHO DID NOT SIGN WOULD BE LAID OFF. IN CROSS-EXAMINATION, STOCKMAN REPEATED HER TESTIMONY WITH RESPECT TO McNAMARA'S PRESENCE AND HIS REQUEST THAT SHE DO HIM A FAVOUR AND SIGN. SHE REPEATED THAT HE SAID THAT IF SHE DID NOT SIGN, THAT THEY WOULD HAVE TO LET HER GO. SHE STATED THAT SHE SIGNED THE PETITION AND LAID IT ON THE PERSONNEL MANAGER'S DESK.

STOCKMAN WAS RECALLED IN REPLY TO CERTAIN TESTIMONY GIVEN BY BLAIN, McNAMARA AND KAVELMAN. SHE REITERATED HER STATEMENT THAT SHE HAD SIGNED THE DOCUMENT AT BLAIN'S DESK IN THE PRESENCE OF McNAMARA, BLAIN AND KAVELMAN.

15. KAVELMAN DENIES STOCKMAN'S STORY INSOFAR AS THE PLACE, THE TIME AND THE MANNER OF THE SIGNING OF THE PETITION IS CONCERNED. SHE STATES THAT SHE HAD BEEN IN THE ENGINEERING OFFICE AND HAD SEEN STOCKMAN COMING OUT OF THE FRONT OFFICE AND GOT HER TO SIGN THE PETITION IN THE WAITING ROOM. SHE STATED THAT THIS OCCURRED BEFORE NOON HOUR WHEREAS STOCKMAN PLACES THE TIME OF HER CALL TO THE OFFICE AT 2:20 IN THE AFTERNOON.

16. DORIS BLAIN, PERSONNEL MANAGER, STATED THAT SHE HAD SENT A MESSAGE BY EILEEN AYERS THAT SHE WANTED TO SEE STOCKMAN. SHE COULDN'T RECALL IF THIS CAME ABOUT IN THE MORNING OR AFTERNOON. WHEN STOCKMAN CAME, SHE TOLD HER WHAT ARRANGEMENTS SHE WAS MAKING WITH RESPECT TO HER PAY FOR HER ABSENCE DUE TO HER BEREAVEMENT. SHE STATED THAT THAT WAS THE EXTENT OF THE CONVERSATION AND THAT NEITHER McNAMARA NOR KAVELMAN WERE PRESENT DURING THE INTERVIEW.

17. McNAMARA, IN TURN, STATED THAT HE WAS NOT PRESENT IN BLAIN'S OFFICE AT ANYTIME THAT STOCKMAN WAS THERE. HE STATED THAT HE HAD NOT AT ANY TIME ASKED STOCKMAN TO DO HIM A FAVOUR. HE WAS ASKED IF HE HAD EVER DISCUSSED ANY DOCUMENT WITH HER. HE REPLIED THAT HE MAY HAVE TRANSMITTED A MESSAGE WITH RESPECT TO THE BEREAVEMENT WITH A REQUEST TO SIGN SOME DOCUMENTS, BUT NOTHING MORE THAN THAT. ON THE WHOLE WE FOUND McNAMARA TO BE A SOMEWHAT RELUCTANT OR WARY WITNESS WHO GAVE AN IMPRESSION OF EVASIVENESS IN AREAS WHERE HIS POSITION OF PLANT MANAGER MIGHT REASONABLY BE EXPECTED TO HAVE ALLOWED MORE IMMEDIATE AND DIRECT RESPONSES

18. IF WE ARE TO ACCEPT THE EVIDENCE OF THE WITNESS FOR THE RESPONDENT AND PETITIONERS IN THIS MATTER, WE MUST, OF COURSE, REJECT ENTIRELY STOCKMAN'S EVIDENCE. WE MUST FIND THAT HER STORY IS A TOTAL FABRICATION BECAUSE, IN OUR OPINION, WE MUST, IN THE CIRCUMSTANCES, ACCEPT OR REJECT THE WHOLE OF HER ACCOUNT. IT IS NOT A MATTER OF SELECTION OF PARTS AND REJECTION OF OTHER PARTS OF THE TESTIMONY.

19. STOCKMAN'S EVIDENCE COMPRISES EVENTS CONTAINING CONSIDERABLE DETAIL, NONE OF WHICH CHANGED IN THREE TELLINGS. SHE NAMED AS CHIEF CHARACTERS TWO HIGHLY PLACED OFFICERS OF THE RESPONDENT, NAMELY THE PLANT MANAGER, McNAMARA, AND THE PERSONNEL MANAGER, BLAIN, PERSONS WHO, AS SHE MUST HAVE BEEN WELL AWARE,

HELD HER JOB IN THEIR HANDS. HER TESTIMONY ALSO, AS NOTED, INVOLVES DETAILED CONVERSATIONS WITH KAVELMAN. SHE ALSO GAVE VERBATIM STATEMENTS ATTRIBUTED BY HER TO McNAMARA. STOCKMAN APPEARED TO US TO BE AN INTELLIGENT YOUNG WOMAN WHO, IF SHE INTENDED TO LIE, WOULD BE HIGHLY UNLIKELY TO INCREASE THE RISK OF CONFUSION AND CONTRADICTION BY INVENTING A STORY AS REplete WITH DETAILS AND PERSONS AS THE ONE SHE RELATED. AS NOTED, STOCKMAN REMAINED CONSTANT IN HER STORY THROUGH EVIDENCE IN CHIEF, CROSS-EXAMINATION AND WHEN TESTIFYING IN REPLY. SHE WAS OBVIOUSLY EMOTIONALLY UPSET BY THE RECENT DEATH OF HER MOTHER AND MENTION OF THE BEREAVEMENT CAUSED HER PERCEPTIBLE DISTRESS WHENEVER IT BECAME NECESSARY TO ALLUDE TO IT. APART FROM THAT, HOWEVER, HER Demeanour IN THE BOX AND THE MANNER IN WHICH SHE TESTIFIED WAS FRANK AND STRAIGHTFORWARD. WE ARE OF THE OPINION THAT CREDENCE IS LENT TO HER ACCOUNT BY REASON OF HER RECITATION OF THE CONVERSATION SHE SAYS SHE HAD WITH KAVELMAN CONCERNING THE MANNER IN WHICH THE LATTER WAS ABLE TO OBTAIN HER TELEPHONE NUMBER. IN OUR VIEW, THIS INCIDENT, IF INVENTED, WOULD CONSTITUTE AN ENTIRELY UNNECESSARY AND SUPERFLUOUS EMBELLISHMENT OF HER STORY AND ONE WHICH WOULD REQUIRE A MENDACIOUS INVENTIVENESS OF WHICH WE DO NOT FIND THE WITNESS, HAVING OBSERVED HER, TO BE CAPABLE. THE MATTER, IN ONE SENSE, IS EXTRANEIOUS TO THE CIRCUMSTANCES SURROUNDING THE INTERVIEW WITH BLAIN AND McNAMARA WHICH IS THE ESSENTIAL POINT OF HER TESTIMONY AND ONE THAT AROSE, WE BELIEVE, SPONTANEOUSLY OUT OF STOCKMAN'S GENUINE CURIOSITY AS TO HOW KAVELMAN OBTAINED HER TELEPHONE NUMBER. IT IS, WE FEEL CHARACTERISTIC OF THE INGENUOUSNESS WHICH WE FOUND TO PREVAIL THROUGHOUT HER TESTIMONY. KAVELMAN STATED THAT SHE DID NOT REMEMBER STOCKMAN MAKING THE INQUIRY WITH RESPECT TO THE PHONE NUMBER.

20. WE ALSO BELIEVE THAT IT IS NOT WITHOUT SIGNIFICANCE THAT KAVELMAN STATED IN HER EVIDENCE THAT SHE WAS ANXIOUS TO GET THE PETITION OUT. SHE HAD MISSED HER EARLY MORNING APPOINTMENT AT WHICH STOCKMAN WAS TO SIGN A PETITION FORM FOR HER AND A CERTAIN URGENCY WAS APPARENT SINCE THAT DAY WAS THE FINAL DAY FOR FILING DOCUMENTS WITH THE BOARD. IT IS ALSO WORTHY OF NOTE THAT THE MESSENGER SENT TO BRING STOCKMAN INTO THE OFFICE WAS EILEEN AYERS, WHO CLAIMED TO BE THE INSTIGATOR AND WAS CERTAINLY A PROMOTER OF THE PETITION. SHE IS A PLANT AND NOT AN OFFICE EMPLOYEE. WE FIND DIFFICULTY, IN THESE CIRCUMSTANCES, IN ACCEPTING KAVELMAN'S EVIDENCE THAT HER MEETING WITH STOCKMAN WAS PURELY COINCIDENTAL.

21. WITH RESPECT TO KAVELMAN, WE WOULD REFER TO THE FACT THAT THERE IS EVIDENCE THAT TWO NOTICES WERE POSTED IN THE PLANT AT TIMES MATERIAL TO THIS ISSUE. THE FIRST NOTICE REFERRED TO,

WAS THE CUSTOMARY NOTICE OF APPLICATION WHICH WAS POSTED BY DIRECTION OF THE BOARD. THE SECOND WAS ONE POSTED BY THE COMPANY PROHIBITING UNION ACTIVITIES ON THE PLANT DURING WORKING HOURS. DURING THE COURSE OF BEING QUESTIONED WITH RESPECT TO THE ORIGINATION OF THE PETITION, KAVELMAN DENIED SEEING THE NOTICE OF APPLICATION. SUBSEQUENTLY, WHEN BEING CROSS-EXAMINED, SHE DENIED, WITH SOME VIGOUR, HAVING SEEN THE NOTICE WITH RESPECT TO UNION ACTIVITIES. KAVELMAN WAS INVOLVED IN THE ORIGINATION OF THE PETITION AND WAS ONE OF THOSE WHO CIRCULATED DOCUMENTS AND OBTAINED SIGNATURES. SHE WAS AN ACTIVE, INTERESTED AND INDUSTRIOUS PROMOTER OF THE PETITION AND OBVIOUSLY MUST HAVE BEEN WELL AWARE OF WHAT WAS GOING ON IN THE PLANT. IT IS VERY HARD INDEED TO BELIEVE SHE SAW NONE OF THE NOTICES AND THE VERY EMPHASIS OF HER DENIAL LEADS TO THE BELIEF THAT THE DENIALS WERE FOR A PURPOSE AND WERE NOT IN ACCORD WITH THE FACTS.

22. THE MATTER OF CREDIBILITY IS ALWAYS A DIFFICULT ONE. IN THE PRESENT CASE, IT IS PARTICULARLY DIFFICULT. WE HAVE, THEREFORE, GIVEN CAREFUL CONSIDERATION TO THE WHOLE OF THE EVIDENCE, KEEPING IN MIND THE Demeanour OF THE WITNESS IN THE BOX AND THE MANNER IN WHICH EACH OF THEM GAVE THEIR TESTIMONY.

23. WE HAVE CONSIDERED OBJECTIVELY WITH THE OTHER EVIDENCE THE LIKELIHOOD OF STOCKMAN, PARTICULARLY IN VIEW OF HER RECENT CONSIDERATE TREATMENT BY THE COMPANY AND BY McNAMARA IN PARTICULAR, FABRICATING A STORY OUT OF WHOLE CLOTH - A STORY FROM WHICH SHE HAD ABSOLUTELY NOTHING TO GAIN, AND FIND WE MUST ACCEPT HER VERSION OF THE MATTER WHEREVER THERE IS CONFLICT. CREDIBILITY IS NOT A MATTER OF NUMBERS AND WE FIND WE MUST ACCEPT STOCKMAN'S EVIDENCE IN PREFERENCE TO THAT OF McNAMARA, BLAIN AND KAVELMAN, WHOSE INTERESTS WOULD NATURALLY BE EXPECTED TO HAVE A COMMON BENT UNSYMPATHETIC TO THAT OF THE UNION APPLICANT.

24. TAKING INTO ACCOUNT ALL OF THE FACTORS MENTIONED ABOVE, WE ALSO FIND WE MUST ACCEPT THE EVIDENCE OF SCHNARR WHEREVER IT CONFLICTS WITH THAT OF AYERS AND McNAMARA. IN DOING SO, WE ARE AWARE OF THE FACT AND WE HAVE TAKEN IT INTO ACCOUNT, THAT THERE ARE NO APPARENT INHERENT INCONSISTENCIES IN McNAMARA'S OR BLAIN'S EVIDENCE, NEVERTHELESS WE PREFER THE EVIDENCE OF SCHNARR AND STOCKMAN WHEREVER A CONFLICT ARISES.

25. WE, THEREFORE, FIND THAT WE CANNOT ACCEPT THE EVIDENCE PROFFERED BY AYERS AS TO THE ORIGINATION OF THE PETITION - A FINDING SUFFICIENT IN ITSELF TO RENDER THE DOCUMENT INVALID - BUT WE ALSO FIND ON THE BASIS OF ALL THE EVIDENCE THAT THERE WAS

CLEARLY MANAGERIAL INTERFERENCE IN THE CIRCULATION OF THE PETITION AND IN THE MANNER IN WHICH SIGNATURES THERETO WERE OBTAINED. THE PETITION THEREFORE DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

26. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT COMPANY IN THE CITY OF WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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28. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON: DECEMBER 3, 1969.

I DISSENT. IN MY OPINION THE DECISION AS TO WHETHER THE PETITION FILED REPRESENTS A VOLUNTARY EXPRESSION BY THE SIGNATORIES TO IT, RESOLVES ITSELF INTO A QUESTION OF CREDIBILITY.

I DIFFER FROM MY COLLEAGUES WITH RESPECT TO THE CONCLUSIONS WHICH SHOULD BE REACHED AFTER HEARING THE EVIDENCE OF THE RESPECTIVE PARTIES.

THE MAJORITY HAVE GIVEN THEIR CONCLUSION WITH RESPECT TO THE ALLEGED INCIDENT INVOLVING SANDRA SCHNARR. I AM OBLIGED TO SAY THAT I PREFER THE EVIDENCE PROFFERED BY THE WITNESSES McNAMARA AND AYERS.

IN THIS REGARD IT IS INTERESTING TO NOTE THAT NO SPECIFIC REFERENCE WAS MADE TO THIS ALLEGED INCIDENT IN THE UNION'S CHARGES. AYERS, WHILE ADMITTING THAT SHE HAD CONVERSATION WITH SCHNARR REGARDING THE PETITION, VEHEMENTLY DENIED THAT SHE HAD HAD ANY CONVERSATION WITH McNAMARA CONCERNING THE PETITION. McNAMARA, WHO DID NOT HAVE THE OPPORTUNITY OF HEARING THE TESTIMONY OF THE WITNESS SCHNARR DENIES SPECIFICALLY THAT HE WAS ANYWHERE NEAR SCHNARR AND AYERS AT THE TIME THAT SCHNARR SUGGESTED HE WAS, AND SAID UNDER OATH THAT "IF THERE WAS A CONVERSATION, I DID NOT HEAR IT".

IT IS OF INTEREST TO NOTE THAT SCHNARR, IN HER TESTIMONY, GAVE EVIDENCE THAT ONE NORMAN HALL WAS APPROXIMATELY 10' AWAY FROM McNAMARA, AYERS AND HERSELF WHEN THE ALLEGED CONVERSATION TOOK PLACE, BUT SHE TESTIFIED THAT HE DID NOT HEAR ANYTHING, NOR WAS HE

CALLED BY THE UNION TO CORROBORATE HER TESTIMONY. I FIND THIS MOST INCREDIBLE IN ASSESSING THE VERACITY OF SCHNARR'S STATEMENTS. HAVING REGARD TO HER DEMEANOUR IN THE WITNESS BOX AND HER EVIDENCE AS A WHOLE, I FIND HER TO BE LESS THAN A CREDIBLE WITNESS.

WITH RESPECT TO THE TESTIMONY OF MARY STOCKMAN AS TO THE CIRCUMSTANCES SURROUNDING HER SIGNING OF THE PETITION. I MUST CONFESS THAT I HAVE CONSIDERABLY MORE DIFFICULTY IN ASSESSING HER CREDIBILITY. HER EVIDENCE OF SIGNING THE PETITION IN THE OFFICE IN THE PRESENCE OF DORIS BLAIN, McNAMARA AND VIOLA KAVELMAN IS SPECIFICALLY DENIED BY EACH OF THE LATTER PERSONS. THERE IS DIRECT CONFLICT BETWEEN HER TESTIMONY AND THAT OF THE OTHER THREE.

IN ASSESSING THE EVIDENCE OF MARY STOCKMAN ONE MUST CONSIDER HER DEMEANOUR IN THE WITNESS BOX. MY COLLEAGUES COMMENT THAT SHE WAS EMOTIONALLY UPSET BY THE RECENT DEATH OF HER MOTHER. THEY MAY BE QUITE CORRECT IN THAT CONCLUSION. HOWEVER, WHATEVER MAY BE THE REASON, THERE IS LITTLE DOUBT THAT WHEN SHE GAVE HER EVIDENCE SHE WAS IN A DISTRAUGHT CONDITION AND HER EVIDENCE WAS GIVEN WITH SOME CONSIDERABLE ANXIETY.

ON THE OTHER HAND, THE EVIDENCE OF BLAIN, McNAMARA AND KAVELMAN WAS GIVEN IN A STRAIGHTFORWARD, LOGICAL MANNER AND SUCH EVIDENCE WAS CORROBORATIVE IN ALMOST EVERY RESPECT. IT SHOULD ALSO HERE BE NOTED THAT EACH OF BLAIN, McNAMARA AND KAVELMAN WERE EXCLUDED FROM THE BOARD ROOM AND DID NOT HAVE THE OPPORTUNITY OF HEARING THE PRECEDING WITNESSES. THAT BEING SO, IT IS DIFFICULT TO CONCEIVE THAT THEIR EVIDENCE COULD BE SO COMPLETELY CORROBORATIVE OF ONE ANOTHER UNLESS THEY WERE TELLING THE TRUTH; AND I WOULD SO FIND.

ACCORDINGLY, I WOULD FIND THAT THE PETITION IS A VOLUNTARY EXPRESSION OF THE TRUE DESIRES OF THE EMPLOYEES WHO WERE SIGNATORIES TO IT AND WOULD ORDER THAT THERE BE A REPRESENTATION VOTE OF THE EMPLOYEES IN THE BARGAINING UNIT.

16895-69-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. B. F. GOODRICH CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND L. COLLINS FOR THE APPLICANT, MICHAEL GORDON, C. A. MORLEY AND DAVID A. BROOKS FOR THE RESPONDENT, W. G. POSTHUMUS AND LESLIE CURREL FOR THE OBJECTORS.

DECISION OF THE BOARD: DECEMBER 19, 1969.

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2. THIS IS AN APPLICATION FOR CERTIFICATION. AT THE FIRST HEARING IN THIS MATTER THE OBJECTORS ALLEGED THAT THERE WAS AN IRREGULARITY CONCERNING THE PAYMENT OF MONEY WITH RESPECT TO THE MEMBERSHIP DOCUMENTS SUBMITTED ON BEHALF OF TWO NAMED EMPLOYEES. THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ALLEGATIONS AND SATISFIED ITSELF THAT THERE WERE NO IRREGULARITIES WITH RESPECT TO THE MEMBERSHIP EVIDENCE OF ONE OF THE NAMED PERSONS. HOWEVER, FOLLOWING THE BOARD'S INQUIRY, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT ON BEHALF OF JAMES KENT LAPERE.

3. THERE WAS NO MATERIAL CONFLICT IN THE EVIDENCE CONCERNING THE MANNER IN WHICH MR. LAPERE SIGNED HIS APPLICATION CARD. THE EVIDENCE ESTABLISHED THAT MR. G. CROWTHERS AND MR. G. E. AULD, TWO EMPLOYEES OF THE RESPONDENT WHO ACTED AS VOLUNTEER ORGANIZERS FOR THE APPLICANT, VISITED MR. LAPERE AT HIS HOME ON TUESDAY, OCTOBER 21, 1969. THEY ARRIVED AT HIS HOME AT APPROXIMATELY 5:30 P.M. MR. LAPERE INVITED THEM IN AND MR. CROWTHERS PRESENTED A UNION APPLICATION CARD TO MR. LAPERE. MR. CROWTHERS AND MR. AULD EXTOLLED THE ADVANTAGES OF JOINING THE UNION. MR. LAPERE AGREED TO SIGN THE CARD AND IN THE PRESENCE OF MR. CROWTHERS AND MR. AULD SIGNED THE FACE OF THE CARD WHICH READS AS FOLLOWS:

UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA

I HEREBY REQUEST AND ACCEPT MEMBERSHIP IN THE UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AND OF MY OWN FREE WILL HEREBY AUTHORIZE THE UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, ITS AGENTS OR REPRESENTATIVE, TO ACT FOR ME AS A COLLECTIVE BARGAINING AGENCY IN ALL MATTERS PERTAINING TO RATES OF PAY, WAGES, HOURS OF EMPLOYMENT, AND TO ENTER INTO CONTRACTS WITH MY EMPLOYER COVERING ALL SUCH MATTERS.

DATE 21st OCTOBER 1969.

"JAMES K. LAPERE"

SIGNATURE OF APPLICANT

I HEREBY ACKNOWLEDGE THAT I HAVE PAID THE SUM OF \$1.00 ON ACCOUNT OF INITIATION FEES IN THE UNITED RUBBER, CORK LINOLEUM AND PLASTIC WORKERS OF AMERICA.

DATE 21st OCTOBER 1969.

"JAMES K. LAPERE"

SIGNATURE OF APPLICANT

I HEREBY CERTIFY THAT I HAVE RECEIVED THE SUM OF \$1.00 ON ACCOUNT OF INITIATION FEES FOR THE UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA FROM THE PERSON WHOSE SIGNATURE APPEARS ABOVE.

DATE OCT. 21 1969,

"GERALD CROWTHERS"

SIGNATURE OF COLLECTOR

4. THE EVIDENCE CONCERNING THE MONEY PAYMENT IS IN DISPUTE. MR. LAPERE TESTIFIED THAT, ON BEING ASKED TO PAY \$1.00 INITIATION FEE, HE ADVISED MR. CROWTHERS THAT HE HAD NO MONEY AND MR. CROWTHERS INFORMED HIM THAT HE COULD NOT LOAN HIM THE \$1.00 BECAUSE HE WAS ACTING AS A UNION ORGANIZER, HOWEVER, MR. AULD COULD PAY THE \$1.00 ON HIS BEHALF. MR. LAPERE STATED THAT HE WOULD REPAY THE LOAN ON THE FOLLOWING PAY DAY, HOWEVER, HE WAS CAUTIONED NOT TO REPAY THE LOAN AT WORK. MR. LAPERE FURTHER TESTIFIED THAT MR. AULD DID NOT GIVE HIM \$1.00 TO PAY TO MR. CROWTHERS NOR DID HE SEE MR. AULD GIVE \$1.00 TO MR. CROWTHERS. MR. LAPERE FURTHER STATED THAT HE HAD NEVER BEEN APPROACHED BY MR. AULD TO REPAY THE \$1.00. HE CLAIMED THAT HE FELT INDEBTED TO MR. AULD FOR \$1.00 AND THOUGHT HE OWED \$1.00 TO HIM. MR. LAPERE LATER QUALIFIED THIS ANSWER AND STATED THAT SINCE HE HAD NOT SEEN MR. AULD PAY \$1.00 TO MR. CROWTHERS ON HIS BEHALF, HE REALLY DIDN'T KNOW WHETHER HE OWED \$1.00 TO MR. AULD. THERE WAS SOME CONFUSION AT THE TIME OF THE VISIT BY MR. CROWTHERS AND MR. AULD TO HIS HOME BECAUSE MR. LAPERE'S TWO YOUNG CHILDREN WERE NOISILY ENGAGED IN PLAY IN THE LIVING ROOM WHERE THE CONVERSATION TOOK PLACE. MR. LAPERE ACKNOWLEDGED THAT WHEN HE SIGNED THE ACKNOWLEDGMENT ON THE MEMBERSHIP CARD THAT HE HAD PAID \$1.00 HE KNEW THAT THE MEMBERSHIP DOCUMENT WOULD BE SUBMITTED BY THE UNION TO THE LABOUR RELATIONS BOARD AS PROOF OF HIS MEMBERSHIP.

5. MR. CROWTHERS TESTIFIED THAT PRIOR TO THE COMMENCEMENT OF THE CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES, MR. COLLINS, A REPRESENTATIVE OF THE APPLICANT, GAVE SPECIFIC INSTRUCTIONS CONCERNING THE MANNER IN WHICH THE VOLUNTEER ORGANIZERS SHOULD OBTAIN APPLICATIONS FOR MEMBERSHIP. THEY WERE SPECIFICALLY WARNED AGAINST LOANING MONEY TO PROSPECTIVE MEMBERS AND WERE FURTHER INSTRUCTED THAT EACH MEMBER HAD TO CONTRIBUTE \$1.00 ON HIS OWN BEHALF IN ORDER TO BECOME A MEMBER OF THE APPLICANT UNION. WHEN THE MEMBERSHIP DOCUMENTS WERE TURNED OVER TO MR. COLLINS PRIOR TO THE APPLICATION BEING MADE, MR. COLLINS AGAIN MADE INQUIRIES AS TO WHETHER OR NOT EACH PERSON WHO SIGNED A CARD HAD CONTRIBUTED \$1.00 ON HIS OWN BEHALF AND RECEIVED ASSURANCES IN

THIS REGARD. MR. CROWTHERS TESTIFIED THAT WHEN MR. LAPERE AGREED TO BECOME A MEMBER MR. CROWTHERS ADVISED HIM THAT THE LAW REQUIRED THAT HE CONTRIBUTE \$1.00 INITIATION FEE. IN REPLY, MR. LAPERE STATED SOMETHING TO THE EFFECT THAT HE WAS HARD UP AND DID NOT HAVE MUCH MONEY, TO WHICH MR. CROWTHERS REPLIED THAT HE WOULD NOT BE ABLE TO LOAN HIM ANY MONEY AND THAT HE HAD BEEN CAUTIONED TO THIS EFFECT BY THE UNION. MR. CROWTHERS FURTHER TESTIFIED THAT MR. LAPERE HANDED OVER THE SIGNED APPLICATION CARD AND WHILE MR. CROWTHERS WAS IN THE PROCESS OF COMPLETING THE RECEIPT MR. LAPERE GAVE HIM A \$1.00 BILL. UPON RECEIPT OF THE \$1.00 INITIATION FEE, MR. CROWTHERS GAVE MR. LAPERE A SIGNED RECEIPT FOR PAYMENT.

6. MR. AULD WHO WAS PRESENT THROUGHOUT THE DISCUSSION CONFIRMED THE EVIDENCE OF MR. CROWTHERS AND SPECIFICALLY DENIED THAT THERE HAD BEEN ANY LOAN OR ARRANGEMENTS FOR A LOAN BY HIM TO MR. LAPERE. MR. AULD TESTIFIED THAT HE SAW MR. LAPERE HAND A \$1.00 BILL TO MR. CROWTHERS.

7. IN THIS CASE, WE HAVE A SITUATION WHERE THERE IS DIRECT CONFLICT, IN A MATERIAL MATTER, BETWEEN THE TESTIMONY OF MR. LAPERE AND THE TESTIMONY OF MR. CROWTHERS AND MR. AULD. IN ASSESSING THE CREDIBILITY OF THE THREE WITNESSES, WE MUST STATE THAT ALTHOUGH MR. LAPERE APPEARED TO BE SLIGHTLY MORE NERVOUS AND LESS COMPOSED THAN EITHER MR. CROWTHERS OR MR. AULD, THERE WAS NOTHING APPARENT IN THE MANNER IN WHICH THEY TESTIFIED WHICH WOULD CAUSE THE BOARD TO CHOOSE TO PREFER THE CREDIBILITY OF ONE OF THE WITNESSES OVER THE OTHER. THE BOARD NOTES THAT THERE WAS SOME MINOR DISCREPANCIES IN THE TESTIMONY OF MR. CROWTHERS AND MR. AULD CONCERNING MATTERS WHICH, OF THEMSELVES, WERE NOT OF SUBSTANCE. HOWEVER, SUCH DEFECTS IN RECOLLECTION OF EVENTS ARE A HUMAN TRAIT AND MAY TEND TO CONFIRM CREDIBILITY RATHER THAN TO ESTABLISH THAT THE WITNESSES ARE NOT TO BE BELIEVED. WHERE THERE IS DIRECT CONFLICT IN A MATERIAL MATTER, SUCH AS WE HAVE IN THE INSTANT CASE, AND THE ISSUE OF CREDIBILITY MUST BE DETERMINED, IT COULD BE SAID THAT THE FACT THAT WE HAVE THE EVIDENCE OF TWO WITNESSES IN SUPPORT OF THE UNION'S POSITION WHEREAS WE HAVE ONE WITNESS OPPOSED TO THAT POSITION, THAT WE SHOULD ACCEPT THE EVIDENCE OF THE MAJORITY OF THE WITNESSES. WHILE THE BOARD MAY BE FORCED TO ADOPT SUCH PRACTICE IN OTHER CASES, IT IS RECOGNIZED THAT SUCH PRACTICE CAN BE VERY UNSATISFACTORY. HOWEVER, IN THE INSTANT CASE, THERE IS ONE PIECE OF OBJECTIVE EVIDENCE WHICH MUST BE CONSIDERED. THE MEMBERSHIP DOCUMENT SUBMITTED ON BEHALF OF MR. LAPERE CONTAINS MR. LAPERE'S SIGNATURE WHEREIN IT IS STATED THAT "I HEREBY ACKNOWLEDGE THAT I HAVE PAID THE SUM OF \$1.00 ON ACCOUNT OF INITIATION FEES IN THE UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA". THIS STATEMENT WAS SIGNED BY MR. LAPERE AT THE TIME HE SIGNED THE APPLICATION FOR MEMBERSHIP AND AT THE TIME THE UNION HAS ALLEGED THAT THE MONEY WAS PAID. IT IS NOTED THAT MR. LAPERE

KNEW THAT THE DOCUMENT CONTAINING HIS SIGNATURE WOULD BE PRESENTED TO THE LABOUR RELATIONS BOARD AS EVIDENCE OF HIS MEMBERSHIP. FURTHER, ALTHOUGH NOTICE OF THIS APPLICATION WAS POSTED BY THE COMPANY IN THE NORMAL MANNER ON OCTOBER 28, 1969, AND MR. LAPERE HAD SIGNED A PETITION IN RESPONSE TO THAT NOTICE ON OR BEFORE NOVEMBER 2, IT WAS NOT ALLEGED UNTIL THE HEARING IN THIS CASE ON NOVEMBER 10, 1969 THAT HE HAD NOT PAID THE \$1.00 AS INDICATED ON THE FACE OF THE MEMBERSHIP DOCUMENT.

8. WHERE THE BOARD IS FACED WITH A CONFLICT OF TESTIMONY AND THE BOARD IS UNABLE TO CHOOSE BETWEEN THE WITNESSES FROM THE MANNER IN WHICH THEY TESTIFIED, EFFECT MUST BE GIVEN TO THE WRITTEN STATEMENT SIGNED BY MR. LAPERE WHEREIN HE ACKNOWLEDGED THAT HE HAD PAID THE MONEY ON OCTOBER 21, 1969.

9. IN THESE CIRCUMSTANCES, WE MUST FIND THAT THE TESTIMONY OF MR. LAPERE HAS NOT ESTABLISHED THAT HE DID NOT PAY THE \$1.00 INITIATION FEE.

10. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

11. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS B. F. GOODRICH CHEMICAL CANADA DIVISION IN THOROLD TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 4, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

16933-69-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT)
V. GLOBE MILLS LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF
AMERICA, AFL-CIO-CLC LOCAL 1125 (INTERVENER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES BEFORE THE HEARING: M. A. HEELEY, S. BURK FOR
THE APPLICANT; FRANK PEARLMAN FOR THE RESPONDENT;
J. MCCONNELL, ERNEST ROUET FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 11, 1969.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 6(2) OF
THE LABOUR RELATIONS ACT. THAT SECTION PROVIDES:

"6.-(2) ANY GROUP OF EMPLOYEES WHO
EXERCISE TECHNICAL SKILLS OR WHO ARE
MEMBERS OF A CRAFT BY REASON OF WHICH
THEY ARE DISTINGUISHABLE FROM THE OTHER
EMPLOYEES AND COMMONLY BARGAIN
SEPARATELY AND APART FROM OTHER EMPLOYEES
THROUGH A TRADE UNION THAT ACCORDING TO
ESTABLISHED TRADE UNION PRACTICE PERTAINS
TO SUCH SKILLS OR CRAFT SHALL BE DEEMED
BY THE BOARD TO BE A UNIT APPROPRIATE
FOR COLLECTIVE BARGAINING IF THE
APPLICATION IS MADE BY A TRADE UNION
PERTAINING TO SUCH SKILLS OR CRAFT, AND
THE BOARD MAY INCLUDE IN SUCH UNIT
PERSONS WHO ACCORDING TO ESTABLISHED TRADE
UNION PRACTICE ARE COMMONLY ASSOCIATED IN
THEIR WORK AND BARGAINING WITH
SUCH GROUP, BUT THE BOARD SHALL
NOT BE REQUIRED TO APPLY THIS
SUBSECTION WHERE THE GROUP OF
EMPLOYEES IS INCLUDED IN A BAR-
GAINING UNIT REPRESENTED BY
ANOTHER BARGAINING AGENT AT THE
TIME THE APPLICATION IS MADE.
R.S.O. 1960, c. 202, S.6".

2. THE ISSUE IN THIS CASE IS WHETHER THE BOARD SHOULD
EXERCISE ITS DISCRETION AND REFUSE TO APPLY SECTION 6(2) SO AS
TO SEVER A CRAFT BARGAINING UNIT FROM AN EXISTING INDUSTRIAL
BARGAINING UNIT. IN EXERCISING OUR DISCRETION WE MUST CONSIDER
THE RIGHT OF THE CRAFT EMPLOYEE TO SELECT SEPARATE REPRESENTA-
TION BY A BARGAINING AGENT WHICH HAS TRADITIONALLY BEEN CONCERNED
WITH THE PROBLEMS OF THIS GROUP OF EMPLOYEES. WEIGHED AGAINST
THIS CONSIDERATION IS THE INTEREST OF THE OTHER EMPLOYEES WHOSE

COLLECTIVE STRENGTH MAY BE WEAKENED BY THE SEVERANCE OF THE CRAFT GROUP AND BY HAVING THOSE CRAFT EMPLOYEES PURSUE THEIR OWN SPECIAL INTERESTS. THERE IS ALSO THE INTEREST OF STABILITY IN LABOUR RELATIONS WHICH HAS BEEN PRODUCED BY THE EXISTING HISTORY AND PATTERN OF BARGAINING AND WHETHER STABILITY MAY BE DISRUPTED BY THE SEVERANCE OF THE CRAFT GROUP.

3. IN THIS CASE THERE IS A BARGAINING PATTERN WHICH HAS EXISTED FOR A PERIOD OF NINETEEN YEARS. THERE IS NO EVIDENCE THAT BARGAINING IN THIS AREA FOR ALL EMPLOYEES INCLUDING THE CRAFT GROUP HAS NOT BEEN EFFECTIVE OR THAT THE INCUMBENT UNION IS NOT EQUIPPED ADEQUATELY TO REPRESENT THE EMPLOYEES WHO SEEK SEVERANCE. NOR IS IT APPARENT THAT THE PRESENT BARGAINING AGENT HAS IGNORED THIS CRAFT GROUP.

4. WHILE THE CRAFT EMPLOYEES PROTEST THAT THEIR PAY ON STATUTORY HOLIDAYS IS NOT COMPARABLE TO THE STATUTORY HOLIDAY PAY OF THE REMAINING EMPLOYEES, WE FIND THAT THE INCUMBENT UNION HAS SUCCEEDED DURING THE LAST NEGOTIATIONS IN REDUCING THE AVERAGE NUMBER OF WORKING HOURS FOR ALL EMPLOYEES BY FIVE HOURS, AND THAT IT HAS GIVEN THE CRAFT EMPLOYEES THE OPPORTUNITY TO ATTEND AT MEETINGS TO DISCUSS AND TO RATIFY THE CONTRACT NEGOTIATIONS. THERE IS NO EVIDENCE THAT THE CRAFT EMPLOYEES MADE ANY SUGGESTIONS AT THESE MEETINGS IN THEIR OWN INTERESTS WHICH WERE UNHEEDED, PARTICULARLY SO WITH RESPECT TO STATUTORY HOLIDAY PAY; NOR IS THERE ANY EVIDENCE THAT DURING THE CURRENCY OF THE COLLECTIVE AGREEMENT THE CRAFT GROUP WERE NOT CONSIDERED. WE FIND THAT THE STATUTORY HOLIDAY PAY IS A MINOR IRREGULARITY, BUT HAVING REGARD TO ALL THE FACTORS WE ARE SATISFIED THAT THE OVERALL INTEREST IN MAINTAINING THE EXISTING BARGAINING PATTERN AND BARGAINING UNIT OUTWEIGHS ANY SPECIAL INTEREST TO BE GAINED IN SEVERING THE CRAFT UNIT. IN THESE CIRCUMSTANCES, THEREFORE, WE DECLINE TO APPLY SUBSECTION (2) OF SECTION 6.

5. THE APPLICATION IS DISMISSED.

16980-69-R: DENTAL TECHNICIANS UNION, LOCAL 43, INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. M. Z. M. LABORATORY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: G. CHARNEY, C. GIES FOR THE APPLICANT; JAMES L. MATERA FOR THE RESPONDENT; V. GALIC FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: DECEMBER 2, 1969.

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3. IN THIS CASE A STATEMENT OF DESIRE WAS FILED IN OPPOSITION TO THE APPLICATION AND THE BOARD HEARD THE EVIDENCE WITH RESPECT (A) TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE STATEMENT OF DESIRE AND (B) THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED. IN THIS CASE THE EVIDENCE RESPECTING THE ORIGINATION OF THE STATEMENT OF DESIRE WAS INCOMPLETE AND IN ADDITION, THERE WAS A LACK OF EVIDENCE WITH RESPECT TO THE MANNER IN WHICH EACH SIGNATURE ON THE STATEMENT OF DESIRE WAS OBTAINED. SEE INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS V. BAUSCH & LOMB OPTICAL COMPANY LIMITED 1969 JULY OLRB MTHLY. REP. 477. ACCORDINGLY, THE BOARD FINDS THAT THE STATEMENT OF DESIRE DOES NOT CAST SUFFICIENT DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED. IN VIEW OF OUR FINDING IN THIS REGARD IT WILL NOT BE NECESSARY TO DEAL WITH THE OTHER MATTERS RAISED IN ARGUMENT CONCERNING THE STATEMENT OF DESIRE. IN ADDITION, THE BOARD FINDS THAT IT WILL NOT BE NECESSARY TO CONSIDER THE CHARGES FILED BY THE APPLICANT.

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FURTHER FINDS THAT ALL DENTAL TECHNICIANS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

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6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

17022-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A.
(APPLICANT) V. THE BUTCHER ENGINEERING ENTERPRISES LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: FRED CHILDS FOR THE APPLICANT;
D. R. BYERS AND W. MEISNER FOR THE RESPONDENT; FRANK DURAJ
AND RICHARD MACKENZIE FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
H. F. IRWIN: DECEMBER 17, 1969.

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2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WAS FILED A STATEMENT OF OBJECTION OR PETITION IN OPPOSITION TO THE APPLICATION. THE BOARD CONDUCTED AN INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED.

3. HAVING REGARD TO ALL OF THE EVIDENCE INCLUDING THAT WITH REFERENCE TO A MEETING ADDRESSED BY THE PLANT MANAGER, THE BOARD FINDS THAT THE PETITION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 4, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(j) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: DECEMBER 17, 1969.

I DISSENT.

THE TESTIMONY OF WITNESS, FRANK DURAJ, WHO ON DECEMBER 1ST PREPARED AND FOR THE MOST PART CIRCULATED THE PETITION, WAS IN MY OPINION LESS THAN FREELY GIVEN, AND AT FIRST UNTRUTHFUL IN AT LEAST ONE REPLY TO A QUESTION PUT TO HIM BY THE CHAIRMAN.

HE SAW THE POSTED GREEN NOTICE BUT DID NOT READ IT UNTIL AFTER THE PLANT MANAGER HAD SPOKEN TO HIM, WHEREUPON HE PREPARED THE PETITION. SIGNATURES WERE OBTAINED IN THE CAFETERIA IN THE BREAK PERIODS AND THE LUNCH PERIOD DURING THE REGULAR HOURS WORKED BY THE WITNESS ON THE AFTERNOON SHIFT, AND DURING THE DAY SHIFT WHEN THE WITNESS WAS IN THE PLANT FOR THAT PURPOSE, OUTSIDE OF HIS REGULAR WORKING HOURS.

WHEN ASKED WHETHER THERE HAD BEEN ANY MEETINGS, THE WITNESS AT FIRST SAID "NO", BUT LATE IN REPLY TO ANOTHER QUESTION REFERRED TO A MEETING OF EMPLOYEES THAT HAD BEEN CALLED BY THE PLANT MANAGER. BREAK PERIODS AND A BONUS WERE DISCUSSED AT THIS MEETING. APPARENTLY MOST EMPLOYEES WERE UNAWARE OF THIS BONUS UNTIL THAT TIME.

THE TESTIMONY OF PETITIONER, RICHARD MACKENZIE, THE CO-SPONSOR OF THE PETITION, WAS THAT THE MEETING OF THE EMPLOYEES WAS HELD ON THE THURSDAY BEFORE DECEMBER 1ST, AFTER THE GREEN NOTICE HAD BEEN POSTED. HE WAS ALSO EMPLOYED ON THE AFTERNOON SHIFT BUT WAS IN FOR THE MEETING AT 3:00 P.M. HIS TESTIMONY WAS THAT THE DAY SHIFT WAS NOTIFIED OF THE MEETING BEFORE 3:00 P.M. WHETHER THE AFTERNOON SHIFT HAD PRIOR NOTICE WAS NOT ESTABLISHED.

THE WITNESS, MACKENZIE, FURTHER TESTIFIED THAT AT THE MEETING THE MANAGER SAID THAT IT WAS UP TO THE EMPLOYEES IF THEY WANTED A UNION, THAT HE COULDN'T STOP IT.

IN THE LIGHT OF THE TESTIMONY AND IN VIEW OF THE CHRONOLOGY OF EVENTS, I FIND THAT THE PETITION WAS A LOGICAL OUTCOME OF THE MEETING CALLED BY MANAGEMENT AND OF A CONVERSATION BY THE MANAGER WITH THE PETITIONER, FRANK DURAJ, WHO WAS THUS INSPIRED AND ENCOURAGED TO PREPARE AND CIRCULATE THE PETITION AGAINST THE UNION.

WHEN COUPLED WITH THE LACK OF CREDIBILITY I FIND IN THE EVIDENCE OF THE FIRST WITNESS, FRANK DURAJ, I AM IMPELLED TO THE CONCLUSION THAT THE PETITION WAS CLEARLY INSPIRED AND SUPPORTED BY MANAGEMENT TO A DEGREE THAT REQUIRES ME TO DENY ITSWEIGHT AGAINST THE EVIDENCE OF MEMBERSHIP IN SUPPORT OF THE UNION WHICH IS SUFFICIENT FOR AUTOMATIC CERTIFICATION.

I WOULD, THEREFORE, CERTIFY THE APPLICANT.

17030-69-R: OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, AFL-CIO-CLC, LOCAL 343 (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 91, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND F. W. MURRAY.

APPEARANCES AT THE HEARING: E. F. ARNOLD FOR THE APPLICANT;
GARFIELD BEAUDRY FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 17, 1969.

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3. IN THIS CASE THE APPLICANT SUBMITTED MEMBERSHIP EVIDENCE WHICH INDICATED THAT THE EMPLOYEES AFFECTED BY THE APPLICATION HAD APPLIED FOR MEMBERSHIP IN THE OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION. IT SHOULD BE NOTED, HOWEVER, THAT THE APPLICANT IN THE PRESENT CASE IS LOCAL 343 OF THE OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION AND NOT THE INTERNATIONAL.

4. THE BOARD'S POLICY WITH RESPECT TO MEMBERSHIP EVIDENCE IS THAT MEMBERSHIP IN AN INTERNATIONAL UNION DOES NOT CONSTITUTE MEMBERSHIP IN A LOCAL UNION, ALTHOUGH MEMBERSHIP IN THE LOCAL UNION MAY BE MEMBERSHIP IN THE INTERNATIONAL. SEE EVVOY-McLEAN LIMITED 1969 FEBRUARY OLRB MONTHLY REPORTS P. 1224; MACDONALDS CONSOLIDATED LIMITED 1969 AUGUST OLRB MONTHLY REPORTS P. 634. BECAUSE THE MEMBERSHIP EVIDENCE IN THIS CASE DOES NOT CONSTITUTE MEMBERSHIP IN THE APPLICANT, WE FIND THAT THE APPLICANT UNION DOES NOT HAVE THE REQUISITE MEMBERSHIP TO ENTITLE IT TO EITHER CERTIFICATION OR A REPRESENTATION VOTE.

5. THE APPLICATION IS ACCORDINGLY DISMISSED.

17057-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DELUXE UPHOLSTERING LIMITED (RESPONDENT) V. DELUXE UPHOLSTERING EMPLOYEES ASSOCIATION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 29, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. THE INTERVENER'S SOLICITOR IN THIS MATTER MAILED THE INTERVENER'S APPLICATION FOR CERTIFICATION TOGETHER WITH THE INTERVENER'S MEMBERSHIP EVIDENCE BY REGULAR MAIL ON THE TERMINAL DATE OF THIS APPLICATION. THE DOCUMENTS WERE NOT RECEIVED BY THE BOARD UNTIL DECEMBER 15, 1969, THREE DAYS SUBSEQUENT TO THE TERMINAL DATE IN THIS MATTER. THERE HAD APPARENTLY BEEN AN ERROR ON THE PART OF A CLERK FROM THE OFFICE OF THE INTERVENER'S SOLICITOR IN THAT HE FAILED TO MAIL THE DOCUMENTS REGISTERED MAIL AS INSTRUCTED BY THE INTERVENER'S SOLICITOR. THE INTERVENER HAS THEREFORE ASKED THAT ITS INTERVENTION BE TREATED AS A TIMELY INTERVENTION AND THAT THE INTERVENER BE INCLUDED ON THE BALLOT IF A REPRESENTATION VOTE IS DIRECTED.

3. FOR THE REASONS GIVEN BY THE BOARD IN THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, OLRB MONTHLY REPORT, MARCH 1968, P. 1182, THE BOARD IS OF THE VIEW THAT WHERE A PARTY RETAINS THE SERVICES OF COUNSEL THAT COUNSEL'S RESPONSIBILITIES WITH RESPECT TO THE OBLIGATIONS IMPOSED BY SECTION 48 OF THE BOARD'S RULES OF PROCEDURE ARE NO LESS ONEROUS THAT THE RESPONSIBILITIES IMPOSED UPON THE PARTY AND A PARTY CANNOT EVADE THE RESULTS OF MISTAKES MADE BY COUNSEL OR CLERKS EMPLOYED BY SUCH COUNSEL. FOR THE REASONS SET OUT IN THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, THE BOARD FINDS THAT THE INTERVENER'S APPLICATION FOR CERTIFICATION WAS MADE SUBSEQUENT TO THE TERMINAL DATE IN THIS APPLICATION AND PURSUANT TO THE PROVISIONS OF SECTION 10 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD FINDS THAT THE INTERVENER'S APPLICATION FOR CERTIFICATION IS UNTIMELY AND ALL MEMBERSHIP DOCUMENTS FILED BY THE INTERVENER WERE ALSO FILED SUBSEQUENT TO THE TERMINAL DATE, CONTRARY TO THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. THE BOARD THEREFORE FINDS THAT THE INTERVENER'S APPLICATION FOR CERTIFICATION MUST BE DISMISSED.

4. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

5. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE
RANK OF FOREMAN, OFFICE AND SALES STAFF,
AND STUDENTS EMPLOYED DURING THE SCHOOL
VACATION PERIOD.

6. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CON-
STITUENCY ON THE 12TH DAY OF DECEMBER, 1969 WHO HAVE NOT
VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN
DISCHARGED FOR CAUSE BETWEEN THE 12TH DAY OF DECEMBER, 1969
AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. THE BOARD DIRECTS THAT ROY HILLER, HOWARD KRUEGER,
ROMEO LAVIGNE, ROBERT MOLSON AND WALTER MOLSON WILL BE PER-
MITTED TO VOTE AND THEIR BALLOTS WILL BE SEGREGATED AND NOT
COUNTED PENDING A RULING BY THE BOARD AS TO THEIR ELIGIBILITY
FOR INCLUSION IN ANY BARGAINING UNIT DETERMINED BY THE BOARD
TO BE APPROPRIATE AND THAT THE BALLOT BOX CONTAINING ALL THE
BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE SHALL BE
SEALED AND THE BALLOTS SHALL NOT BE COUNTED PENDING THE
FURTHER DIRECTION BY THE BOARD.

8. MR. C. F. ROBICHEAU, EXAMINER, IS AUTHORIZED TO
INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RES-
PONSIBILITIES OF ROY HILLER, HOWARD KRUEGER, ROMEO LAVIGNE,
ROBERT MOLSON AND WALTER MOLSON.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY
WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

17058-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
793 (APPLICANT) v. ROBERTSON-IRWIN LIMITED (RESPONDENT).

BEFORE: R. A. FURNESS, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 15, 1969.

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2. THE APPLICANT FILED TWO STATEMENTS OF MEMBERSHIP.
THE STATEMENTS ARE SIGNED BY THE MEMBERS AND INDICATE THAT

THE PERSONS IN QUESTION ARE MEMBERS IN GOOD STANDING OF THE APPLICANT. THE STATEMENTS CONTAIN A CERTIFICATION BY THE ASSISTANT BUSINESS MANAGER THAT THE PERSONS SIGNING THE STATEMENT IS IN FACT A MEMBER IN GOOD STANDING. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

3. THE RESPONDENT FILED A REPLY, A LIST OF EMPLOYEES CONTAINING TWO NAMES, BUT FAILED TO FILE SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

4. THE BOARD FINDS THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

6. IN PARAGRAPH 8 OF ITS REPLY THE RESPONDENT HAS PROPOSED AS THE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING:

OUR EMPLOYEES OF ROBERTSON-IRWIN LIMITED
WORKING IN THE COUNTY OF HALDIMAND
ENGAGED IN THE OPERATION OF SMALL 850
POUND MATERIAL HOISTS AND SIMILAR
EQUIPMENT, EXCEPT WORKING FOREMEN AND
THOSE ABOVE THE RANK OF NON-WORKING FOREMEN.

THE APPLICANT SEEKS ITS REGULAR BARGAINING UNIT IN THE REGULAR AREA ESTABLISHED BY THE BOARD AS THE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING. THE BOARD NOTES THAT THE LOCATION OF THE JOB-SITE IS WITHIN THE COUNTY OF HALDIMAND. IN ITS REPLY THE RESPONDENT STATES:

13. THE DESCRIPTION USED BY THE APPLICANT UNDER 7 ON FORM 49 DOES NOT APPLY TO THE WORKERS WHICH THE UNION CLAIMS TO BE IN THEIR JURISDICTION AS WE DO NOT OPERATE CRANES, SHOVELS, BULLDOZERS, AND SIMILAR EQUIPMENT ON THIS JOB WHICH IS THE ONLY ONE IN CONTRACT. YOUR APPLICANT DESCRIBES UNDER NUMBER 4 THE SPECIFIC NATURE OF ONE BUSINESS AFFECTED BY THE APPLICATION AS MECHANICAL CONTRACTORS.

OUR COMPANY IS NOT ACTING AS A MECHANICAL CONTRACTOR. OUR COMPANY WORKS AS SHEET METAL CONTRACTOR AND MECHANICAL PARTS OF A CONTRACT ARE NOT IN OUR JURISDICTION.

THE TWO EMPLOYEES INVOLVED DO NOT MAINTAIN THE CONSTRUCTION EQUIPMENT. THIS IS USUALLY BEING DONE AT HEADQUARTERS IN HAMILTON.

THE BOARD FURTHER NOTES THAT THE RESPONDENT CONSENTS TO THE APPLICATION BEING DISPOSED OF WITHOUT A HEARING BY THE BOARD, "PROVIDING THAT OUR REPRESENTATIONS UNDER #13 BE TAKEN PROPERLY INTO ACCOUNT".

THE TWO EMPLOYEES AFFECTED BY THIS APPLICATION ARE DESCRIBED BY THE RESPONDENT AS "HOISTING ENGINEERS". IT IS THE PRACTICE OF THE BOARD TO GRANT TO THE APPLICANT THE BARGAINING UNIT IT IS SEEKING WHETHER OR NOT THERE ARE PRESENT EMPLOYEES WHO WOULD FALL INTO ALL OF THE CLASSIFICATIONS DESCRIBED IN THE BARGAINING UNIT, SEE LIGHTFOOT CONSTRUCTION LIMITED CASE, BOARD FILE 11247-65-R. SIMILARLY, THE AREA SOUGHT BY THE APPLICANT IS A WELL-ESTABLISHED AREA GRANTED BY THE BOARD AND WE SEE NO REASON FOR DEPARTING THEREFROM. IT IS NOT CLEAR FROM THE RESPONDENT'S REPLY WHETHER IT IS SEEKING TO EXCLUDE "WORKING FOREMEN" OR "NON-WORKING FOREMEN". IT IS ALSO THE PRACTICE OF THE BOARD TO INCLUDE WORKING FOREMEN IN CRAFT BARGAINING UNITS SUCH AS THE ONE UNDER CONSIDERATION IN THE PRESENT APPLICATION. THE BOARD IS OF THE OPINION THAT OTHER POINTS RAISED BY THE RESPONDENT IN PARAGRAPH 13 OF ITS REPLY DO NOT AFFECT THE MERITS OF THIS APPLICATION. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND TO THE FOREGOING THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR THE PURPOSES OF CLARITY THE BOARD DECLARES THAT THE WORDS "SIMILAR EQUIPMENT" INCLUDES HOISTS.

. . .

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16304-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT)
V. J. MCLEOD AND SONS LIMITED (RESPONDENT) V. UNITED ASSOCIATION
OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING
INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 508
(INTERVENER #1) V. LOCAL UNION No. 1687 OF THE INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #2) V. LABOURERS'
INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (INTERVENER #3)
V. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION
504 (INTERVENER #4).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. BINNIE AND G. VANDEZANDE FOR THE
APPLICANT; J. KELLEHER FOR THE RESPONDENT; L. ARNOLD AND W. MAHAR
FOR INTERVENER #1; NO ONE APPEARING FOR INTERVENER #2; G. FLOOK
FOR INTERVENER #3; AND NO ONE APPEARING FOR INTERVENER #4.

DECISION OF THE BOARD: DECEMBER 10, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE BOARD HAS
ALREADY RULED THAT INTERVENER #3 HAS NO STATUS IN THESE PROCEEDINGS
IN AS MUCH AS IT HOLDS NO BARGAINING RIGHTS FOR ANY OF THE RES-
PONDENT'S EMPLOYEES AND DID NOT FILE ANY EVIDENCE OF MEMBERSHIP
AMONG EMPLOYEES.

. . .

4. THE APPLICANT PROPOSES A BARGAINING UNIT DESCRIBED AS
FOLLOWS:

ALL EMPLOYEES (PLUMBERS AND STEAMFITTERS)
ENGAGED IN THE PLUMBING AND HEATING OPERATIONS
OF THE RESPONDENT WORKING IN THE CITY OF SAULT
STE. MARIE, THE TOWNSHIP OF PRINCE AND THE
TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE
AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN, OFFICE AND
SALES STAFF.

THE RESPONDENT PROPOSED A BARGAINING UNIT IN THE FOLLOWING TERMS:

ALL EMPLOYEES ENGAGED IN THE PLUMBING AND
HYDRONIC HEATING OPERATIONS OF THE RESPONDENT IN
THE AREA HEREINAFTER DEFINED, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, SALES
AND OFFICE STAFF, STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD AND PERSONS REGULARLY
EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

DESCRIPTION OF AREA:

WESTERN BOUNDARY - THE WESTERN BOUNDARY OF THE
DISTRICT OF ALGOMA.
NORTH BOUNDARY - THE 49TH PARALLEL.
SOUTH BOUNDARY - THE SOUTHERN LIMIT OF THE
DISTRICT OF ALGOMA.
EAST BOUNDARY - A LINE RUNNING NORTH AND SOUTH
FROM THE EASTERLY LIMIT OF THE
TOWNSHIP OF STRIKER IN THE DISTRICT
OF ALGOMA.

INTERVENER #1 CURRENTLY HOLDS THE BARGAINING RIGHTS FOR:

ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE
FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES
IN THE EMPLOY OF THE RESPONDENT WITHIN THE
JURISDICTIONAL AREA OF THE UNION AS PER MAP
ATTACHED.

THIS IS THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #1, WHICH AGREEMENT CEASED TO OPERATE ON JULY 1, 1968 AND HAS NOT BEEN RE-NEGOTIATED. THE MAP REFERRED TO IN THE ABOVE DESCRIBED UNIT WAS NOT PRODUCED BEFORE THE BOARD ALTHOUGH IT WAS SUGGESTED THAT THE AREA COVERED BY THE MAP WAS THE CITY OF SAULT STE. MARIE TOGETHER WITH OUTLYING AREAS STRETCHING TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON. WE ARE INFORMED, HOWEVER, THAT THE EMPLOYEES WORKING FOR THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION WERE ALL ENGAGED IN SAULT STE. MARIE.

5. INTERVENER #1 TOOK THE POSITION THAT THE BARGAINING UNIT SHOULD BE THE SAME AS THE UNIT IN THE LAST COLLECTIVE AGREEMENT BETWEEN IT AND THE RESPONDENT. THE APPLICANT CONTENDED THAT THE UNIT SHOULD INCLUDE PLUMBERS' HELPERS WHO WERE NOT COVERED BY THE SAID COLLECTIVE AGREEMENT. THE APPLICANT POINTED OUT THAT, WHEN IT APPLIES FOR CERTIFICATION FOR UNORGANIZED EMPLOYEES IN THE CONSTRUCTION INDUSTRY, THE BOARD HAS REQUIRED IT TO TAKE ALL TRADES ON THE JOB ON THE DATE OF THE MAKING OF THE APPLICATION AND IT SUBMITTED THAT THE SAME PRINCIPLE SHOULD APPLY IN THE PRESENT APPLICATION. WE HAVE GIVEN THIS MATTER OUR CAREFUL CONSIDERATION AND HAVE COME TO THE CONCLUSION THAT A DISTINCTION OUGHT TO BE MADE WHERE AN APPLICANT TRADE UNION IN THE CONSTRUCTION INDUSTRY IS SEEKING TO DISPLACE AN INCUMBENT UNION SUCH AS INTERVENER #1. IN SUCH CIRCUMSTANCES THE UNIT REPRESENTED BY THE INCUMBENT APPEARS TO US TO BE THE APPROPRIATE UNIT. FURTHER, IN THIS CASE, THERE HAS BEEN A HISTORY OF BARGAINING THROUGH INDIVIDUAL TRADES SUCH AS THE PLUMBERS, THE ELECTRICIANS AND THE SHEET METAL WORKERS FOR A

CONSIDERABLE NUMBER OF YEARS AND WE ARE NOT DISPOSED TO DISTURB THAT HISTORY. IT SHOULD PERHAPS BE POINTED OUT THAT NONE OF THE HELPERS IS A MEMBER OF THE APPLICANT.

6. IN SO FAR AS THE GEOGRAPHIC AREA IS CONCERNED, IF THERE HAD BEEN NO INCUMBENT UNION, THE BOARD WOULD HAVE FOLLOWED ITS NORMAL PRACTICE OF GRANTING THE AREA PROPOSED BY THE APPLICANT, THAT IS, AREA 21, WHICH IS A MUCH SMALL AREA THAN THAT FOR WHICH INTERVENER #1 CURRENTLY HOLDS BARGAINING RIGHTS. TO DO SO, HOWEVER, MIGHT WELL RESULT IN THE RESPONDENT HAVING TO BARGAIN WITH THE APPLICANT FOR SAULT STE. MARIE AND THE ADJOINING MUNICIPALITIES AND WITH INTERVENER #1 FOR MORE OUTLYING AREAS - A SITUATION WHICH WOULD BE INTOLERABLE FROM AN INDUSTRIAL RELATIONS POINT OF VIEW.

7. HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND ITS OUTLYING AREAS TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR PURPOSES OF CLARITY THE BOARD FINDS THAT THOSE PERSONS CLASSIFIED AS PLUMBERS' HELPERS OR LABOURERS ARE NOT INCLUDED IN THE BARGAINING UNIT. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT M. POZZOBON, P. VYHNAL AND A. SCORNAIENCHI ARE LABOURERS OR PLUMBERS' HELPERS.

8. THE BOARD FINDS FURTHER THAT L. A. JACKSON IS REGISTERED WITH THE APPRENTICESHIP BRANCH OF THE DEPARTMENT OF LABOUR AS AN APPRENTICE. WHILE HE MAY NOT BE INDENTURED AS AN APPRENTICE WITH THE RESPONDENT, HE IS CLEARLY A PLUMBERS' APPRENTICE AND THEREFORE FALLS WITHIN THE SCOPE OF THE BARGAINING UNIT.

9. THE BOARD FINDS FURTHER THAT EUGENE HAMEL DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. HOWEVER HE MAY DESCRIBE HIMSELF, HE CLEARLY DOES NOT HAVE THE AUTHORITY OF A MANAGER AS ENVISAGED IN SUCH CASES AS SOVEREIGN CONSTRUCTION COMPANY LIMITED, OLRB M.R. APRIL, 1967, P. 24; PRE-CON MURRAY LIMITED, OLRB M.R. AUGUST, 1965, P. 328; AND UNI-FORM BUILDERS LTD., OLRB M.R. MARCH 1967, P. 1019. FURTHER, WE ARE UNABLE TO FIND THAT HAMEL IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. WHATEVER MAY HAVE TAKEN PLACE

BETWEEN HAMEL AND THE RESPONDENT DOES NOT, IN OUR VIEW, LEAD TO THE INFERENCE THAT HE WAS EMPLOYED -- AND WE EMPHASIZE THE WORD "EMPLOYED" -- IN A CONFIDENTIAL CAPACITY ON MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF THE SAID SECTION 1(3)(B).

10. THE NEXT QUESTION TO BE CONSIDERED IS THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT ON THE DAY OF THE MAKING OF THE APPLICATION. HAVING REGARD TO OUR FINDINGS IN PARAGRAPHS 7, 8 AND 9 THERE WERE FOUR PERSONS AT WORK THAT DAY WHO ARE CLEARLY INCLUDED IN THE UNIT. HOWEVER, THE BOARD IS ALSO FACED WITH THE QUESTION AS TO WHETHER ANY OF THE EMPLOYEES OF THE RESPONDENT WHO ENGAGED IN A LAWFUL STRIKE COMMENCING JULY 12TH, 1968, AND WHO HAVE NOT RETURNED TO WORK, ARE EMPLOYEES IN THE BARGAINING UNIT FOR THE PURPOSES OF THIS APPLICATION. INTERVENER #1 CONTENDED THAT SUCH PERSONS ARE STILL EMPLOYEES BY REASON OF SECTION 1(2) OF THE LABOUR RELATIONS ACT WHICH PROVIDES:

FOR PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO HAVE CEASED TO BE AN EMPLOYEE BY REASON ONLY OF HIS CEASING TO WORK FOR HIS EMPLOYER AS THE RESULT OF A LOCK-OUT OR STRIKE OR BY REASON ONLY OF HIS BEING DISMISSED BY HIS EMPLOYER CONTRARY TO THIS ACT OR TO A COLLECTIVE AGREEMENT.

THE APPLICANT AND THE RESPONDENT ARGUED THAT THE PERSONS IN QUESTION HAVE CEASED TO BE EMPLOYEES BECAUSE OF THEIR SUBSEQUENT CONDUCT INCLUDING THE TAKING OF OTHER EMPLOYMENT, DETAILS OF WHICH WILL BE REVIEWED BELOW. COUNSEL ARGUED THAT THE KEY WORD IN SECTION 1(2) IS "ONLY" AND THAT THIS WORD CLEARLY MEANS THAT THE EMPLOYER-EMPLOYEE RELATIONSHIP MAY BE TERMINATED IN A WAY OR WAYS WHICH ARE NOT RELATED TO THE ACT OF STRIKING OR LOCKING OUT. WE WOULD NOT DISAGREE WITH THIS GENERALIZATION WHICH, HOWEVER, STILL POSES THE PROBLEM, UNDER WHAT CIRCUMSTANCES DOES AN EMPLOYEE, PROTECTED BY SECTION 1(2), CEASE TO BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT?

11. NOT ALL ASPECTS OF THIS PROBLEM ARISE IN THIS PARTICULAR CASE. THUS WE ARE NOT CALLED ON TO DEAL WITH THE STATUS OF A STRIKING EMPLOYEE WHERE A STRIKE HAS TERMINATED WITHOUT SETTLEMENT. NO ARGUMENT WAS ADDRESSED TO US THAT THERE WAS NO LONGER A STRIKE IN PROGRESS AND, WHILE NOT SUGGESTING THAT SUCH AN ARGUMENT WOULD NECESSARILY HAVE BEEN SUCCESSFUL, WE THINK IT IMPORTANT TO CLARIFY THIS POINT IN VIEW OF THE LENGTH OF TIME WHICH HAS ELAPSED SINCE THE COMMENCEMENT OF THE STRIKE. AGAIN, NO QUESTION ARISES IN THIS

CASE AS TO THE CIRCUMSTANCES, IF ANY, IN WHICH AN EMPLOYER MAY DISCHARGE AN EMPLOYEE FOR MISCONDUCT DURING A STRIKE.

12. COUNSEL FOR THE APPLICANT AND RESPONDENT, HOWEVER, APPEAR TO TAKE THE POSITION (THOUGH IT WAS NOT THEIR MAIN ARGUMENT) THAT THE HIRING OF A REPLACEMENT THEREBY TERMINATES THE EMPLOYMENT STATUS OF A STRIKING EMPLOYEE. THERE SEEMS NO DOUBT THAT A STRUCK EMPLOYER HAS A RIGHT TO ATTEMPT TO CARRY ON HIS OPERATION AND TO HIRE REPLACEMENTS. TO SAY, HOWEVER, THAT THE HIRING OF A REPLACEMENT MEANS THAT THE REPLACED STRIKING EMPLOYEE THEREBY LOSES THE STATUS ACCORDED HIM BY SECTION 1(2) IS ANOTHER MATTER. IF SUCH WERE THE CASE, THEN AS SOON AS A MAJORITY OF THE STRIKERS HAD BEEN REPLACED, IT WOULD BE OPEN FOR THE REPLACEMENTS TO APPLY FOR TERMINATION OF BARGAINING RIGHTS OF THE BARGAINING AGENT -- THAT IS, THE STRIKING UNION. STRIKERS, NOT BEING EMPLOYEES, WOULD HAVE NO STATUS IN SUCH AN APPLICATION WHICH, IF SUCCESSFUL, WOULD BRING ABOUT THE TERMINATION OF THE STRIKE. IT SEEMS TO US WRONG IN PRINCIPLE AND NOT WITHIN THE SPIRIT AND INTENT OF SECTION 1(2) THAT THE ACT OF REPLACEMENT COULD DEPRIVE A STRIKING EMPLOYEE NOT ONLY OF PARTICIPATING IN A DECISION AS TO WHETHER A STRIKE WOULD CONTINUE BUT ALSO OF PARTICIPATING IN A DECISION AS TO WHETHER HIS BARGAINING AGENT SHOULD CONTINUE TO REPRESENT HIM. AS COUNSEL FOR INTERVENER #1 POINTED OUT, ONE OF THE RIGHTS CONFERRED BY SECTION 1(2) IS A BARGAINING RIGHT -- THAT IS, TO FORCE AN EMPLOYER TO BARGAIN -- AND IT SEEMS REASONABLE TO HOLD THAT STRIKING EMPLOYEES SHOULD HAVE SOME SAY IN DETERMINING WHETHER THAT RIGHT IS TO BE TAKEN AWAY. WE NOTE THAT BASTIN J. IN RE BRANDON PACKERS LIMITED, (1960) 33 W.W.R. 58, APPEARS TO HOLD A SIMILAR VIEW. IT WAS SUBMITTED, HOWEVER, THAT LOCKE J. IN HIS OBITER REMARKS IN CANADIAN PACIFIC RAILWAY V. ZAMBRI (1962) 34 D.L.R. 654, 62 CLLC PAR. 15,407 AT P. 451, TOOK A CONTRARY VIEW. IN THE PASSAGE IN QUESTION HIS LORDSHIP, AFTER STATING THAT AN EMPLOYER IS AT LIBERTY TO FILL THE PLACES OF STRIKERS, THEN WENT ON TO SAY:

...AT THE TERMINATION OF THE STRIKE, EMPLOYERS ARE NOT OBLIGED TO CONTINUE TO EMPLOY THEIR FORMER EMPLOYEES IF THEY HAVE NO WORK FOR THEM TO DO, DUE TO THEIR POSITIONS BEING FILLED. I CAN FIND NO SUPPORT ANYWHERE FOR THE VIEW THAT THE EFFECT OF THE SUBSECTION IS TO CONTINUE THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE INDEFINITELY, UNLESS IT IS TERMINATED IN ONE OF THE MANNERS SUGGESTED.

IT APPEARS TO US THAT THIS PASSAGE IS KEYED TO THE OPENING WORDS,

"AT THE TERMINATION OF THE STRIKE" AND THAT HIS LORDSHIP WAS NOT CONSIDERING THE QUESTION OF A REPLACEMENT DURING A STRIKE. AS WE POINTED OUT ABOVE, THERE IS NO SUGGESTION IN THIS CASE THAT THE STRIKE HAS TERMINATED.

13. WE TURN NOW TO CONSIDER THE MAIN CONTENTION OF COUNSEL FOR THE APPLICANT AND THE RESPONDENT, THAT IS, THAT THE TAKING OF EMPLOYMENT ELSEWHERE BY A STRIKER, AT LEAST IF IN THE SAME TRADE, TERMINATES THE EMPLOYER-EMPLOYEE RELATIONSHIP OF THE STRIKER QUA THE EMPLOYER AGAINST WHOM THE STRIKE IS DIRECTED. IN SUPPORT OF THIS ARGUMENT COUNSEL RELIES ON THE FOLLOWING PASSAGE FROM THE JUDGMENT OF McRUER C.J.H.C. IN CANADIAN PACIFIC RAILWAY V. ZAMBRI (1962) 31 D.L.R. 209, 62 CLLC PAR. 15,380, AT P. 356:

THERE REMAINS TO BE DISCUSSED ONE OTHER ARGUMENT PUT FORWARD BY MR. JACKETT. COUNSEL ASKS THE QUESTION, "IF THE LAW IS AS I HAVE STATED IT TO BE, WHAT IS THE LEGAL POSITION WHERE A STRIKE IS NEVER CONCLUDED BY A SETTLEMENT?" THIS IS A QUESTION THAT IT MAY NOT BE NECESSARY FOR ME TO ANSWER. HOWEVER, I THINK THE ANSWER IS QUITE SIMPLE. IN SUCH A CASE THE EMPLOYEES HAVE EITHER GONE BACK TO WORK, TAKEN EMPLOYMENT WITH OTHER EMPLOYERS, DIED OR BECOME UNEMPLOYABLE. SUCH EMPLOYEES COULD NOT ANY LONGER, ADAPTING THE LANGUAGE OF SECTION 1(2), BE DEEMED TO HAVE CEASED TO BE EMPLOYEES BY REASON ONLY OF THEIR CEASING TO WORK FOR THEIR EMPLOYER AS THE RESULT OF A STRIKE.

IT IS TO BE NOTED THAT THE CHIEF JUSTICE HIMSELF FELT THAT THIS PASSAGE WAS PERHAPS OBITER AND THAT WOULD APPEAR TO BE THE VIEW OF CARTWRIGHT J. IN THE SUPREME COURT WHERE HE SAYS, "IT IS NOT NECESSARY TO DECIDE THE EXACT RELATIONSHIP OF EMPLOYER AND EMPLOYEE, THE EXISTENCE OF WHICH THIS SUBSECTION [SIC SECTION 1(2)] PRESERVES, OR CREATES, DURING THE CONTINUANCE OF THE STRIKE;" [62 CLLC AT P. 455]. IN ANY EVENT, WE DO NOT BELIEVE CHIEF JUSTICE McRUER WAS ADDRESSING HIS MIND TO THE QUESTION OF A STRIKING EMPLOYEE TAKING EMPLOYMENT AS AN INTERIM MEASURE DURING A STRIKE. AS IN THE CASE OF LOCKE J. HE WAS CONSIDERING A SITUATION WHERE IN EFFECT THE STRIKE WAS OVER OR LOST.

14. OTHER CASES IN THE COURTS WERE REFERRED TO BY COUNSEL FOR THE VARIOUS PARTIES BUT WE HAVE NOT FOUND THEM TO BE OF ANY REAL ASSISTANCE TO US. THUS THE JOHN EAST IRON WORKS LIMITED CASE [1948] 4 D.L.R. 673, DOES NOT APPEAR TO DEAL WITH THE PROBLEM AT ALL AND THE SAME IS TRUE OF THE SUPREME COURT OF

NOVA SCOTIA IN THE LAWSON MOTORS LIMITED CASE [1954] 1 D.L.R. 759, 54 CLLC PAR. 15,089. THE CANADIAN GYPSUM CO. LTD. CASE (1959) 20 D.L.R. (2d) 319, 60 CLLC PAR. 15,268, WAS NOT CONCERNED WITH STRIKING EMPLOYEES TAKING OTHER EMPLOYMENT BUT, RATHER, WITH TORTIOUS CONDUCT OF STRIKERS DURING A STRIKE. MACDONALD J. DESCRIBED THE RELATIONSHIP CREATED BY A SECTION OF THE NOVA SCOTIA LABOUR RELATIONS ACT SIMILAR TO SECTION 1 (2) OF THE ONTARIO ACT AS A "NOMINAL" ONE BUT INDICATES THE WHOLE QUESTION WAS ONE REQUIRING "FURTHER CLARIFICATION". ON THE OTHER HAND, IT WOULD APPEAR FROM THE DECISION OF HARRISON J. IN THE LAWSON MOTORS LIMITED CASE, SUPRA, THAT THE NOVA SCOTIA LABOUR RELATIONS BOARD INCLUDED STRIKERS, WHO HAD SECURED OTHER EMPLOYMENT, AMONG EMPLOYEES ELIGIBLE TO VOTE ON A DECERTIFICATION VOTE. CLEARLY THE BOARD ORDER INCLUDED STRIKERS AND HARRISON J. REFERS TO AN AFFIDAVIT FILED IN COURT WHICH STATED THAT MANY OF THE STRIKERS HAD TAKEN EMPLOYMENT WITH OTHER CONCERNS. UNFORTUNATELY, THERE IS NO INDICATION OF THE NATURE OF THAT EMPLOYMENT. THE ALBERTA BOARD OF INDUSTRIAL RELATIONS ACTED IN THE SAME WAY IN NORTH CANADIAN FOREST INDUSTRIES LIMITED, 64 CLLC PAR. 16,008, THOUGH ADMITTEDLY THE SECTION IN THE ALBERTA LABOUR ACT THERE UNDER CONSIDERATION DIFFERS FROM SECTION 1(2) OF THE ONTARIO ACT. IT IS DIFFICULT TO SAY WHAT THE POSITION OF THE MANITOBA LABOUR RELATIONS BOARD WAS IN RE BRANDON PACKERS LIMITED, SUPRA. THE ORDER OF THAT BOARD AS SET OUT BY BASTIN J. MAKES STRIKING EMPLOYEES ELIGIBLE TO VOTE WHO HAVE NOT SINCE THE COMMENCEMENT OF THE STRIKE "EFFECTIVELY REMOVED THEMSELVES FROM THE THEN BARGAINING UNIT;" BUT THERE IS NO INDICATION OF WHAT THE BOARD INTENDED BY EFFECTIVE REMOVAL. ALTHOUGH COUNSEL DID NOT REFER US TO ANY AMERICAN DECISIONS, OUR OWN EXAMINATION REVEALS SUCH A DIFFERENCE IN WORDING IN THE RELEVANT STATUTES THAT THE DECISIONS IN QUESTION ARE OF NO REAL ASSISTANCE TO US.

15. OUR REVIEW OF THE AUTHORITIES LEADS US TO THE CONCLUSION THAT THEY DO NOT - CERTAINLY IN ANY POSITIVE OR DIRECT FASHION - SUPPORT THE CONTENTION OF COUNSEL THAT THE TAKING OF OTHER EMPLOYMENT BY A STRIKER THEREBY SEVERS THE EMPLOYEE-EMPLOYER RELATIONSHIP PRESERVED BY SECTION 1(2) BECAUSE IT IS INCONSISTENT WITH THAT STATUS. TWO OTHER LABOUR RELATIONS BOARDS HAVE IN FACT TAKEN THE OPPOSITE POINT OF VIEW. IT IS NOT UNCOMMON FOR STRIKING EMPLOYEES TO SEEK OTHER EMPLOYMENT DURING A STRIKE AND THIS SURELY MUST HAVE BEEN WITHIN THE CONTEMPLATION OF THE LEGISLATURE WHEN SECTION 1(2) WAS ENACTED. FURTHER, IN OUR VIEW, THIS IS A MATTER WHICH EMPLOYERS KNOW IS LIKELY TO OCCUR JUST AS STRIKING EMPLOYEES REALIZE THAT AN EMPLOYER MAY SEEK TO CONTINUE HIS OPERATION BY HIRING REPLACEMENTS DURING THE CURRENCY OF THE STRIKE. WE ARE THEREFORE UNABLE TO ACCEPT THE ARGUMENT THAT TAKING OTHER EMPLOYMENT DURING A STRIKE,

EVEN IN THE SAME TRADE, IS NECESSARILY INCONSISTENT WITH THE STRIKER'S EMPLOYEE STATUS REGARDLESS OF WHAT THE POSITION MAY BE WHEN A WORKING EMPLOYEE, AS DISTINCT FROM A STRIKING EMPLOYEE, TAKES OTHER WORK. IT THUS BECOMES UNNECESSARY TO DEAL WITH THE ARGUMENT OF COUNSEL FOR THE APPLICANT AND RESPONDENT THAT THE MERE ACCEPTANCE OF OTHER EMPLOYMENT SEVERS THE RELATIONSHIP WITHOUT ANY FURTHER POSITIVE ACT BY THE EMPLOYER. HOWEVER, WE SHOULD LIKE TO POINT OUT THAT THE AUTHORITIES CITED TO US DO NOT APPEAR TO SUPPORT THIS PROPOSITION. IN THE CANADIAN GYPSUM CO. LTD. CASE, SUPRA, THE COMPANY TOOK THE POSITIVE ACT OF DISCHARGING THE EMPLOYEES AND THE SAME IS TRUE WITH RESPECT TO THE CASES DISCUSSED IN 39 C.E.D. P. 221 ET SEQ. WE PERHAPS SHOULD ADD THAT THERE IS NO POSITIVE EVIDENCE BEFORE US THAT THE RESPONDENT DISCHARGED ANY EMPLOYEE BECAUSE HE TOOK OTHER EMPLOYMENT.

16. WHILE IT IS OUR CONCLUSION THAT THE TAKING OF OTHER EMPLOYMENT BY A STRIKER DOES NOT NECESSARILY SEVER HIS EMPLOYMENT RELATIONSHIP WITH HIS REGULAR EMPLOYER, WE CONCEDE THAT IT IS ONE OF THE FACTORS WHICH HAS TO BE CONSIDERED IN DETERMINING WHETHER A STRIKING EMPLOYEE HAS CEASED TO BE AN EMPLOYEE. THIS ADMITTEDLY IS A DIFFICULT QUESTION BECAUSE, AS IS POINTED OUT BY THE ALBERTA BOARD IN NORTH CANADIAN FOREST INDUSTRIES LIMITED, SUPRA, IN ONE SENSE IT CANNOT BE DETERMINED WHETHER THE JOB TAKEN BY A STRIKER IS TEMPORARY OR PERMANENT UNTIL THE STRIKE IS SETTLED OR IR LOST. THE QUESTION IS ONE WHICH IN OUR VIEW MUST BE DETERMINED ON AN OBJECTIVE BASIS, HAVING REGARD TO ALL THE CIRCUMSTANCES. AT ONE END OF THE SCALE WILL BE THE CLEAR-CUT CASE OF THE EMPLOYEES WHO DECIDES TO QUIT AND SO INFORMS HIS EMPLOYER; AT THE OTHER END WILL BE THE EMPLOYEE WHO TAKES OTHER EMPLOYMENT AND THAT IS ALL THE EVIDENCE. OBVIOUSLY THE CASE OF EACH EMPLOYEE WILL HAVE TO BE EXAMINED ON ITS MERITS AND THIS WE NOW PROPOSE TO DO IN THIS APPLICATION.

17. THE PERSONS WITH WHOM WE ARE HERE CONCERNED ARE P. BASSANELLO, P. BUONOMO, N. BURELLA, G. HUFFMAN, A. LAPOINTE, L. MORNEAU, L. MUCCIN AND E. WEGHER. PRIOR TO THE STRIKE, BURELLA HAD BEEN EMPLOYED WITH RESPONDENT FOR 11 YEARS, WEGHER FOR 11-1/2 YEARS AND MORNEAU 4 TO 5 YEARS. BOTH WEGHER AND BURELLA CONSIDERED THEIR JOBS TO BE PERMANENT. ALL THREE ARE MARRIED, WERE PERMANENT RESIDENTS OF SAULT STE. MARIE AND HAVE MAINTAINED THAT RESIDENCE. MORNEAU HAS WORKED IN SARNIA FOR 6 OR 7 MONTHS. BURELLA HAS HAD FOUR JOBS SINCE THE STRIKE, THE LONGEST BEING HIS PRESENT JOB AT EXCANABA, MICHIGAN. HE DID NOT CONSIDER ANY OF THOSE JOBS AS PERMANENT. WEGHER DID NOT OBTAIN OTHER EMPLOYMENT UNTIL JUNE, 1969 AND THEN WITH ANOTHER SAULT STE. MARIE PLUMBING FIRM. MORNEAU AND BURELLA WERE ALSO WORKING IN THE TRADE, THAT IS, AS A WELDER AND PLUMBER RESPECTIVELY. NEITHER BURELLA NOR MORNEAU OBTAINED THEIR UNEMPLOYMENT INSURANCE BOOKS FROM THE RESPONDENT WHO STILL HAS THEM IN HIS POSSESSION. WEGHER ASKED FOR HIS BOOK IN THE FALL OF 1968 BECAUSE HE WAS "THINKING OF GOING OUT OF TOWN FOR A WHILE" BUT DID NOT IN FACT GO. NONE OF THE THREE RECEIVED THEIR VACATION PAY FOR THE PERIOD JULY 1ST 1968 TO JULY 12, 1968 UNTIL

SOME TIME IN THE SUMMER OF 1969, WHICH IS THE NORMAL TIME THAT EMPLOYEES WOULD RECEIVE SUCH PAY. THERE IS ALSO EVIDENCE THAT AT A REGULAR MEETING OF INTERVENER #1 IT WAS AGREED THAT ANY OF THE EMPLOYEES ON STRIKE WHO WERE GOING OUT OF TOWN ON A TRAVEL CARD SHOULD RETURN TO THEIR EMPLOYERS WHEN THE STRIKE WAS OVER AND THIS AGREEMENT WAS ORALLY BROUGHT TO THE ATTENTION OF SOME OF THE STRIKERS WHO PICKED UP TRAVEL CARDS AT THE UNION OFFICE.

8. THE PARTIES AGREED THAT MORNEAU HAD NEVER QUIT NOR BEEN FIRED BY THE RESPONDENT AND WOULD RETURN TO WORK IF RECALLED AND IF THE STRIKE WAS SETTLED. WEGHER AND BURELLA TESTIFIED IN SIMILAR MANNER. ALTHOUGH R. J. MCLEOD, THE SECRETARY-TREASURER OF THE RESPONDENT, MADE A STATEMENT TO THE EXAMINER THAT MORNEAU, WEGHER AND BURELLA "HAD BEEN TERMINATED AND PAID OUT AT THE TIME OF THE STRIKE" THIS IS OBVIOUSLY IN DIRECT CONFLICT WITH THE SUBSEQUENT AGREEMENT OF THE PARTIES WITH RESPECT TO MORNEAU. BOTH WEGHER AND BURELLA TESTIFIED THAT THEY HAD NOT BEEN FIRED AND HAD NOT QUIT. NO DOUBT ALL THREE WERE "PAID OUT" AT THE TIME OF THE STRIKE AND THE RESPONDENT MAY HAVE REGARDED THAT AS THE EQUIVALENT OF TERMINATING THEIR SERVICES. HOWEVER, WE ARE NOT PREPARED TO FIND ON ALL THE EVIDENCE THAT MCLEOD TOLD THEM THEY WERE FIRED OR TERMINATED. IN ANY EVENT, IT IS CLEAR FROM THE CANADIAN PACIFIC RAILWAY COMPANY V. CAMBRI CASE (SUPRA) THAT THE RESPONDENT WAS NOT ENTITLED TO TERMINATE THEIR SERVICES SIMPLY BECAUSE THEY HAD GONE ON STRIKE AND THERE IS NOTHING IN THE EVIDENCE TO SUGGEST THAT THERE WAS ANY OTHER REASON FOR SO ACTING.

9. ON CONSIDERING THE ABOVE FACTS IN THE LIGHT OF THE PRINCIPLES DISCUSSED EARLIER, WE ARE SATISFIED THAT BURELLA, MORNEAU AND WEGHER HAVE NOT CEASED TO BE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOR THE PURPOSES OF THIS APPLICATION. THEY HAVE NOT, IN OUR VIEW, ABANDONED THEIR INTEREST IN THEIR STRUCK JOBS. WE SHOULD ADD THAT ON THE EVIDENCE BEFORE US WE ARE UNABLE TO ATTACH ANY SPECIAL SIGNIFICANCE TO THE FACT THAT WEGHER SECURED EMPLOYMENT IN THE TRADE WITH ANOTHER SAULT STE. MARIE FIRM. WE SHOULD ALSO LIKE TO STRESS THAT WE DO NOT CONSIDER THE PRESENT CASE TO BE ONE TYPICAL OF THE CONSTRUCTION INDUSTRY. IT IS POSSIBLE, THOUGH WE EXPRESS NO FINAL OPINION ON THIS POINT, THAT THE TAKING OF OTHER EMPLOYMENT IN DIFFERENT TYPES OF CONSTRUCTION INDUSTRY CASES MAY LEAD US TO A DIFFERENT CONCLUSION.

10. WE TURN NOW TO DEAL WITH THE OTHER PERSONS IN DISPUTE. A LAPOINTE WAS LAID OFF JUNE 13, 1968. COUNSEL FOR INTERVENER #1 CONCLUDED THAT P. BUONOMO WAS ALSO ON LAY-OFF ON THE DATE OF THE STRIKE COMMENCED, NAMELY, JULY 12, 1968. THERE IS NO SUGGESTION THAT THE LAY-OFFS WERE FOR A DEFINITE PERIOD. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO FIND THAT LAPOINTE AND BUONOMO, WHO WERE ON AN

INDEFINITE LAY-OFF ON THE DATE THE STRIKE COMMENCED, ARE EMPLOYEES FOR THE PURPOSES OF SECTION 1(2) OF THE ACT AND ACCORDINGLY WE FIND THAT THEY ARE NOT EMPLOYEES FOR THE PURPOSES OF THE PRESENT APPLICATION.

21. AT THE FIRST MEETING WITH THE EXAMINER THE RESPONDENT STATED THAT L. MUCCIN WAS ALSO ON LAY-OFF, COMMENCING JUNE 28, 1968. ALTHOUGH MUCCIN WAS NOT AVAILABLE FOR EXAMINATION, THE PARTIES AGREED THAT HIS CLAIM WAS THAT HE WENT ON VACATION FROM JUNE 28, 1968 AND CONTINUED TO BE ON VACATION AS OF THE DATE OF THE STRIKE. HUCKSON, THE RESPONDENT'S OFFICE MANAGER, TESTIFIED THAT A PERSON ON VACATION REMAINED AN EMPLOYEE. HE STATED TO THE EXAMINER THAT MUCCIN WAS LAID OFF FOR LACK OF WORK, BUT IN ANSWER TO QUESTIONS BY THE APPLICANT HE PUT IT SOMEWHAT DIFFERENTLY WHEN HE SAID THAT HE "DID NOT RECALL THAT MUCCIN WAS ON VACATION". HE TESTIFIED FURTHER THAT THE COMPANY RECORDS DID NOT MAKE ANY DISTINCTION BETWEEN A LAY-OFF AND A VACATION. WE MUST ACCEPT THE AGREED FACTS WITH RESPECT TO MUCCIN AS INCLUDING, AT THE VERY LEAST, A POSITIVE CLAIM BY MUCCIN THAT HE WAS ON VACATION. THE RESPONDENT'S INITIAL STATEMENT TO THE EXAMINER THROUGH ITS SECRETARY-TREASURER AND HUCKSON'S STATEMENT MUST BE VIEWED IN THE LIGHT OF THE STATE OF THE COMPANY RECORDS, TOGETHER WITH HUCKSON'S FURTHER TESTIMONY THAT HE DID NOT "RECALL" THAT MUCCIN WAS ON VACATION. IN OTHER WORDS, HUCKSON DOES NOT IN FACT DENY MUCCIN'S CLAIM AND THE COMPANY RECORDS ARE OF NO ASSISTANCE IN CLARIFYING THE MATTER. AFTER CAREFUL CONSIDERATION WE FIND THAT MUCCIN WAS ON HOLIDAYS ON JULY 12TH, THE DATE THE STRIKE COMMENCED AND WAS AN EMPLOYEE OF THE RESPONDENT ON THAT DATE. THE POSITION OF MUCCIN FOLLOWING JULY 12, 1968 CLOSELY PARALLELS THAT OF MORNEAU, WEGHER AND BURELLA AND WE THEREFORE IN THAT MUCCIN HAS NOT CEASED TO BE AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT FOR THE PURPOSES OF THIS APPLICATION.

22. OF THE GROUP UNDER CONSIDERATION WE ARE LEFT WITH BASSANELLO AND HUFFMAN. BOTH WERE LONG TERM EMPLOYEES OF THE RESPONDENT AND PERMANENT RESIDENTS OF SAULT STE. MARIE. BOTH TOOK OTHER EMPLOYMENT FOLLOWING THE COMMENCEMENT OF THE STRIKE, BASSANELLO GETTING HIS FIRST JOB IN JANUARY 1969 AND HUFFMAN ABOUT SIX WEEKS AFTER THE STRIKE COMMENCED. BOTH DENY THAT THEY TOLD HUCKSON, THE OFFICE MANAGER, THAT THEY WERE TROUBLE WITH MCLEOD'S. ON THE OTHER HAND, HUCKSON TESTIFIED THAT BOTH ASKED FOR THE RETURN OF THEIR UNEMPLOYMENT INSURANCE BOOKS AND AT THE TIME BOTH TOLD HIM THAT THEY WERE QUITTING MCLEOD'S. THE BOARD IS THUS FACED WITH A CREDIBILITY PROBLEM WITH RESPECT TO WITNESSES IT HAS NEITHER SEEN NOR HEARD. IT MIGHT BE ARGUED THAT THE BOARD SHOULD DRAW AN INFERENCE FROM THE FACT THAT BASSANELLO OBTAINED HIS UNEMPLOYMENT INSURANCE BOOK WHEREAS HUFFMAN'S BOOK IS STILL IN THE POSSESSION OF THE RESPONDENT. ON THE OTHER HAND, IT MIGHT FURTHER BE ARGUED WITH RESPECT TO HUFFMAN THAT HIS EVIDENCE SHOULD BE VIEWED IN THE LIGHT OF THE

FACT THAT ALTHOUGH HE CLAIMS NOT TO HAVE TOLD HUCKSON THAT HE WAS THROUGH WITH MCLEOD'S, THIS STATEMENT WAS PRECEDED BY ANOTHER STATEMENT TO THE EFFECT THAT HE HAD FORGOTTEN WHAT CONVERSATION HE HAD WITH HUCKSON. AFTER CONSIDERING ALL THE EVIDENCE, WE FIND OURSELVES IN DOUBT AS TO WHETHER BASSANELLO AND HUFFMAN WERE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION. THAT DOUBT MUST BE RESOLVED AGAINST INTERVENER #1 WHO IS ASSERTING THAT THEY ARE EMPLOYEES. IN THIS RESPECT IT SHOULD PERHAPS BE NOTED THAT, IN GENERAL, A STRIKING UNION IS IN A BETTER POSITION IN ADDUCE EVIDENCE RESPECTING THE STATUS OF ITS MEMBERS WHO ARE ON STRIKE THAN THE EMPLOYER OR OTHER TRADE UNION APPLYING FOR CERTIFICATION. WE THEREFORE FIND THAT BASSANELLO AND HUFFMAN WERE NOT EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

23. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE FIND THAT ON THE DATE OF THE MAKING OF THE APPLICATION THE FOLLOWING EMPLOYEES WERE IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 7, NAMELY: E. HAMEL, E. FOSTER, P. CLARGO, L. JACKSON, L. MORNEAU, E. WEGHER, N. BURELL AND L. MUCCIN.

24. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 23, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

25. IT IS APPROPRIATE AT THIS POINT TO DEAL WITH TWO SUBMISSIONS MADE BY INTERVENER #1. THE FIRST IS THAT SHOULD THE BOARD FIND THE APPROPRIATE UNIT TO BE THE ONE CONTAINED IN ITS FORMER COLLECTIVE AGREEMENT WITH THE RESPONDENT, THEN THE APPLICANT SHOULD NOT BE CERTIFIED FOR SUCH A UNIT BECAUSE IT IS NOT A CRAFT UNION. IT SHOULD BE MADE CLEAR THAT OUR FINDING WITH RESPECT TO THE APPROPRIATE UNIT IN THIS CASE IS NOT A FINDING MADE UNDER SECTION 6(2) OF THE ACT BUT RATHER UNDER SECTION 6(1). THE APPLICANT HAS BEEN CERTIFIED IN A NUMBER OF PREVIOUS CASES FOR UNITS RESTRICTED TO ONE TRADE -- NOT, HOWEVER, ON THE BASIS THAT THE UNIT IS A CRAFT UNIT BUT RATHER THAT IT IS AN APPROPRIATE UNIT UNDER SECTION 6(1). WE SEE NO MERIT, THEREFORE, IN THIS SUBMISSION.

26. INTERVENER #1 HAS ALSO SUBMITTED THAT THE BUILD-UP PRINCIPLE SHOULD BE APPLIED IN THE PRESENT CASE, THAT IS, THAT THE RESPONDENT HAS FEWER EMPLOYEES IN ITS EMPLOY THAN IT WOULD NORMALLY HAVE AND THAT THEREFORE THE BOARD SHOULD EITHER POSTPONE ANY VOTE WHICH MIGHT BE DIRECTED OR DISMISS THE APPLICATION ON THE GROUND OF PREMATURITY. WE REJECT THIS ARGUMENT ON TWO GROUNDS. IN THE FIRST PLACE, THERE IS NO CONCRETE EVIDENCE BEFORE THE BOARD WITH RESPECT TO WHAT MIGHT BE FAIRLY TERMED THE "NORMAL COMPLEMENT" OF THE RESPONDENT'S EMPLOYEES.

IN ANY EVENT, WHERE STRIKING EMPLOYEES ARE TAKEN INTO CONSIDERATION IN ASCERTAINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF MAKING OF AN APPLICATION, THE BUILD-UP PRINCIPLE HAS NO APPLICATION. IN THE SECOND PLACE, UNDER SECTION 92(2) THE BOARD NEED NOT HAVE REGARD TO ANY INCREASE IN EMPLOYEES AFTER THE MAKING OF A CONSTRUCTION INDUSTRY APPLICATION. IT HAS NOT BEEN THE POLICY OF THE BOARD, IN GENERAL, TO APPLY THE BUILD-UP PRINCIPLE IN CONSTRUCTION INDUSTRY CASES AND WE SEE NO REASON FOR DEPARTING FROM THAT GENERAL POLICY IN THE CIRCUMSTANCES OF THIS CASE.

27. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

28. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERVENER #1, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 508.

29. THE MATTER IS REFERRED TO THE REGISTRAR.

16305-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ALEX'S PLUMBING AND HEATING LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (INTERVENER #1) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 508 (INTERVENER #2)

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. BINNIE AND G. VANDEZANDE FOR THE APPLICANT; J. KELLEHER FOR THE RESPONDENT; G. FLOOK FOR INTERVENER #1; AND L. ARNOLD, R. WATSON AND W. MAHAR FOR INTERVENER #2.

DECISION OF THE BOARD: DECEMBER 10, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT PROPOSED A BARGAINING UNIT DESCRIBED AS FOLLOWS:

ALL EMPLOYEES ENGAGED IN THE PLUMBING AND HEATING OPERATIONS OF THE RESPONDENT WORKING IN THE CITY OF SAULT STE. MARIE, THE TOWNSHIP OF PRINCE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF.

THE RESPONDENT PROPOSED A BARGAINING UNIT IN THE FOLLOWING TERMS:

ALL EMPLOYEES ENGAGED IN THE PLUMBING AND HYDRONIC HEATING OPERATIONS OF THE RESPONDENT IN THE AREA HEREINAFTER DEFINED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, SALES AND OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

DESCRIPTION OF AREA:

WESTERN BOUNDARY - THE WESTERN BOUNDARY OF THE DISTRICT OF ALGOMA.
NORTH BOUNDARY - THE 49TH PARALLEL.
SOUTH BOUNDARY - THE SOUTHERN LIMIT OF THE DISTRICT OF ALGOMA.
EAST BOUNDARY - A LINE RUNNING NORTH AND SOUTH FROM THE EASTERLY LIMIT OF THE TOWNSHIP OF STRIKER IN THE DISTRICT OF ALGOMA.

INTERVENER #2 CURRENTLY HOLDS THE BARGAINING RIGHTS FOR:

ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE JURISDICTIONAL AREA OF THE UNION AS PER MAP ATTACHED.

THIS IS THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #2, WHICH AGREEMENT CEASED TO OPERATE ON JULY 1, 1968 AND HAS NOT BEEN RE-NEGOTIATED. THE MAP REFERRED TO IN THE ABOVE DESCRIBED UNIT WAS NOT PRODUCED BEFORE THE BOARD ALTHOUGH IT WAS SUGGESTED THE THE AREA COVERED BY THE MAP WAS THE CITY OF SAULT STE. MARIE TOGETHER WITH OUTLYING AREAS STRETCHING TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH OF THE 49TH PARALLEL AND WEST TO MARATHON.

5. INTERVENER #2 TOOK THE POSITION THAT THE BARGAINING UNIT SHOULD BE THE SAME AS THE UNIT IN THE LAST COLLECTIVE AGREEMENT BETWEEN IT AND THE RESPONDENT. THE APPLICANT CONTENDED THAT THE UNIT SHOULD INCLUDE A PERSON DESCRIBED AS A PART-TIME LABOURER AND TRUCK DRIVER, ONE ANTHONY MANCHER, WHO WAS NOT COVERED BY THE SAID COLLECTIVE AGREEMENT. A SIMILAR SITUATION AROSE IN THE COMPANION CASE OF J. MCLEOD AND SONS LIMITED, BOARD FILE NO. 16304-69-R. THERE IS ALSO A PROBLEM RELATING TO THE APPROPRIATE GEOGRAPHIC AREA WHICH, AGAIN, WAS CONSIDERED IN THE MCLEOD CASE. FOR THE REASONS GIVEN IN THE DECISION OF EVEN DATE IN THAT CASE, THE BOARD FURTHER FINDS THAT ALL PLUMBER, STEAM-FITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND ITS OUTLYING AREAS TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT ANTHONY MANCHER, CLASSIFIED AS A PART-TIME LABOURER AND TRUCK DRIVER, IS NOT INCLUDED IN THE BARGAINING UNIT.

6. IN VIEW OF THE BARGAINING UNIT FOUND TO BE APPROPRIATE, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE STATUS AND SUBMISSIONS OF INTERVENER #1. FURTHER, THE ARGUMENTS OF INTERVENER #2 WITH RESPECT TO THE APPLICANT NOT BEING A CRAFT UNION AND ON THE QUESTION OF BUILD-UP WERE DEALT WITH IN THE MCLEOD CASE AND WE ADOPT THE SAME REASONING IN THIS APPLICATION.

7. INTERVENER #2 HAS CHALLENGED THE INCLUSION OF THREE PERSONS ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, NAMELY: D. DOWNEY, J. MACINNIS AND T. ACETI. ALTHOUGH DOWNEY WAS ORIGINALLY CHALLENGED AS BEING PART OF MANAGEMENT, THE INTERVENER'S POSITION DURING ARGUMENT WAS THAT HE WAS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THERE IS NO EVIDENCE TO SUPPORT THE CONTENTION THAT DOWNEY IS A PART OF MANAGEMENT. DOWNEY'S POSITION IS SOMEWHAT SIMILAR TO THAT OF EUGENE HAMEL IN THE J. MCLEOD AND SONS LIMITED CASE, SUPRA. FOR THE REASONS GIVEN IN THAT CASE WE ARE UNABLE TO FIND THAT DOWNEY IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND WE THEREFORE FIND THAT HE WAS AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

8. IT APPEARS THAT MACINNIS, WHO IS DESCRIBED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AS A PLUMBER, WAS ISSUED A PROVISIONAL PROVINCIAL CERTIFICATE FOR THAT TRADE. INTERVENER #2'S OBJECTION TO

MACINNIS IS THE FORM OF A BLANKET OBJECTION TO THE ISSUANCE OF SUCH CERTIFICATES. HOWEVER, SUCH A BLANKET OBJECTION DOES NOT CONSTITUTE EVIDENCE THAT MACINNIS IS NOT A PLUMBER AS CLAIMED. HE HAS BEEN EMPLOYED AS A PLUMBER BY THE RESPONDENT PRESUMABLY ON THE STRENGTH OF THE PROVISIONAL CERTIFICATE AND, IN THESE CIRCUMSTANCES, WE FIND THAT ON THE DATE OF THE MAKING OF THE APPLICATION HE WAS AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT.

9. THOMAS ACETI IS A QUALIFIED PLUMBER AND WELDER WHO IS EMPLOYED BY ANOTHER EMPLOYER. IN HIS SPARE TIME HE ALSO WORKS FOR THE RESPONDENT ON A PART-TIME BASIS. HE RECEIVES VACATION PAY FROM THE RESPONDENT WHO ALSO MAKES DEDUCTIONS FOR INCOME TAX AND CANADA PENSION PLAN PURPOSES. IN CONSTRUCTION INDUSTRY CASES THE BOARD MAKES NO DISTINCTION BETWEEN REGULAR FULL-TIME AND PART-TIME EMPLOYEES. ON THE DATE OF THE MAKING OF THE APPLICATION ACETI WORKED FOR THE RESPONDENT FOR FOUR HOURS AND THIS WOULD NORMALLY BE SUFFICIENT TO INCLUDE HIM IN A CONSTRUCTION INDUSTRY BARGAINING UNIT. WE CAN SEE NO GROUND IN THIS CASE FOR DEPARTING FROM OUR STANDARD PRACTICE AND, ACCORDINGLY, FIND THAT ACETI WAS AN EMPLOYEE IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

10. THERE WERE TWO PERSONS, F. FOURNIER AND G. SCHRAEDER, EMPLOYED BY THE RESPONDENT WHO WENT ON A LAWFUL STRIKE ON JULY 12TH, 1968 AND WHO HAD NOT RETURNED TO WORK ON JUNE 16TH, 1969, THE DATE OF MAKING OF THE APPLICATION. THE BOARD NOTES THAT INTERVENER #2 ABANDONED ITS ATTEMPT TO SHOW THAT F. FOURNIER WAS STILL AN EMPLOYEE.

11. SCHRAEDER WAS EMPLOYED BY THE RESPONDENT FOR A YEAR AND A HALF PRIOR TO THE STRIKE. HE "FIGURED" THE JOB WAS PERMANENT AS LONG AS THERE WAS WORK. HE HAD NEVER BEEN LAID OFF IN THE YEAR AND A HALF. HE IS MARRIED AND STILL LIVES IN SAULT STE. MARIE. HE DID NOT QUIT THE RESPONDENT NOR HAS HE BEEN FIRED. HE HAS HAD FOUR OTHER JOBS SINCE THE STRIKE COMMENCED, NONE OF WHICH HE REGARDED AS PERMANENT. ALL OF THE JOBS HAVE BEEN AWAY FROM SAULT STE. MARIE. IF THE STRIKE WAS SETTLED HE WOULD RETURN TO WORK FOR THE RESPONDENT. HE HAS CONTINUED PAYING PREMIUMS FOR HIS MEDICAL AND HOSPITAL INSURANCE TO RESPONDENT, ALTHOUGH RESPONDENT HAS NOT CONTRIBUTED TO THE PREMIUMS. HE HAS NOT RECEIVED HIS HOLIDAY PAY FROM RESPONDENT. HE WAS ASKED TO RETURN TO WORK ONCE OR TWICE BUT REFUSED BECAUSE OF THE STRIKE.

12. THE GENERAL PRINCIPLES APPLICABLE TO THE EMPLOYMENT STATUS OF STRIKING EMPLOYEES ARE DISCUSSED IN THE COMPANION CASE OF J. MCLEOD AND SONS LIMITED, BOARD FILE NO. 16304-69-R (DECISION OF EVEN DATE) AND THERE IS NO NEED TO REPEAT THEM HERE SINCE THE TWO CASES WERE ARGUED TOGETHER. HAVING REGARD TO THE FACT THAT THERE IS NO BASIC DISTINCTION BETWEEN SCHRAEDER'S POSITION AND THAT OF MORNEAU, WEGHER AND BURELLA IN THE MCLEOD CASE, WE FIND THAT SCHRAEDER WAS AN EMPLOYEE

OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION.

13. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE FIND FURTHER THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE NINE EMPLOYEES IN THE BARGAINING UNIT AS FOLLOWS: D. DOWNEY, J. MACINNIS, T. ACETI, G. SCHRAEDER, T. F. MACDONALD, P. DEROSBIE, S. HOLDEN, B. CAMPBELL AND J. PIROZZI.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 23, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

16. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERVENER #2, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 508.

17. THE MATTER IS REFERRED TO THE REGISTRAR.

16306-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SMITH AND ELSTON COMPANY LIMITED (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 508 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (INTERVENER #2) SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 504, (INTERVENER #3)

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. BINNIE AND G. VANDEZANDE FOR THE APPLICANT; J. KELLEHER FOR THE RESPONDENT; L. ARNOLD, R. WATSON AND W. MAHAR FOR INTERVENER #1; G. FLOOK FOR INTERVENER #2; AND NO ONE APPEARING FOR INTERVENER #3.

DECISION OF THE BOARD: DECEMBER 10TH, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT PROPOSED A BARGAINING UNIT DESCRIBED AS FOLLOWS:

ALL EMPLOYEES ENGAGED IN THE PLUMBING AND HEATING OPERATIONS OF THE RESPONDENT WORKING IN THE CITY OF SAULT STE. MARIE, THE TOWNSHIP OF PRINCE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF.

THE RESPONDENT PROPOSED A BARGAINING UNIT IN THE FOLLOWING TERMS:

ALL EMPLOYEES ENGAGED IN THE PLUMBING AND HYDRONIC HEATING OPERATIONS OF THE RESPONDENT IN THE AREA HEREINAFTER DEFINED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, SALES AND OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

DESCRIPTION OF AREA:

WESTERN BOUNDARY - THE WESTERN BOUNDARY OF THE DISTRICT OF ALGOMA.

NORTH BOUNDARY - THE 49TH PARALLEL.

SOUTH BOUNDARY - THE SOUTHERN LIMIT OF THE DISTRICT OF ALGOMA.

EAST BOUNDARY - A LINE RUNNING NORTH AND SOUTH FROM THE EASTERLY LIMIT OF THE TOWNSHIP OF STRIKER IN THE DISTRICT OF ALGOMA.

INTERVENER #1 CURRENTLY HOLDS THE BARGAINING RIGHTS FOR:

ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE JURISDICTIONAL AREA OF THE UNION AS PER MAP ATTACHED.

THIS IS THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #1, WHICH AGREEMENT CEASED TO OPERATE ON JULY 1, 1968 AND HAS NOT BEEN RE-NEGOTIATED. THE MAP REFERRED TO IN THE ABOVE DESCRIBED UNIT WAS NOT PRODUCED BEFORE THE BOARD ALTHOUGH IT WAS SUGGESTED THAT THE AREA COVERED BY THE MAP WAS THE CITY OF SAULT STE. MARIE TOGETHER WITH OUTLYING AREAS STRETCHING TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON. INTERVENER #1 TOOK THE POSITION THAT THE BARGAINING UNIT SHOULD BE THE SAME AS THE UNIT IN THE LAST COLLECTIVE AGREEMENT BETWEEN IT AND THE RESPONDENT.

5. UNLIKE THE RESPONDENT IN THE COMPANION CASE OF J. MCLEOD AND SONS LIMITED, BOARD FILE NO. 16304-69-R, THE RESPONDENT IN THIS CASE DID NOT EMPLOY LABOURERS OF PLUMBERS' HELPERS ON THE DATE OF THE MAKING OF THE APPLICATION. THUS THE ARGUMENT OF THE APPLICANT IN THE MCLEOD CASE WITH RESPECT TO THE INCLUSION OF ALL TRADES IN THE BARGAINING UNIT DOES NOT ARISE IN THIS CASE. IN ANY EVENT, WE ARE SATISFIED THAT THE DESCRIPTION SHOULD BE THE SAME AS THAT CONTAINED IN THE LAST COLLECTIVE AGREEMENT BETWEEN INTERVENER #1 AND THE RESPONDENT. IN SO FAR AS THE AREA IS CONCERNED, WE ADOPT THE REASONING SET OUT IN THE J. MCLEOD AND SONS LIMITED DECISION OF EVEN DATE.

6. HAVING REGARD, THEN, TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND ITS OUTLYING AREAS TO A POINT 5 MILES EAST OF BLIND RIVER NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. OUR FINDINGS WITH RESPECT TO THE APPROPRIATE BARGAINING UNIT MAKE IT UNNECESSARY TO DEAL WITH THE STATUS AND SUBMISSIONS OF INTERVENER #2. FURTHER, THE ARGUMENTS OF INTERVENER #1 WITH RESPECT TO THE APPLICANT NOT BEING A CRAFT UNION AND ON THE QUESTION OF BUILD-UP WERE DEALT WITH IN THE MCLEOD CASE AND WE ADOPT THE SAME REASONING IN THIS APPLICATION.

8. THERE WERE FOUR EMPLOYEES AT WORK ON THE DATE OF MAKING OF THE APPLICATION WHO WOULD FALL INTO THE BARGAINING UNIT AND AS TO WHOM THERE WAS NO CHALLENGE BY ANY OF THE PARTIES. THERE WERE FOUR OTHER PERSONS WHO WERE EMPLOYEES ON JULY 12, 1968 AND WHO HAD GONE ON A LEGAL STRIKE ON THAT DATE. THESE PERSONS WERE B. MICK, R. ZAHRADKA, J. RENNISON AND A. MOSER. THE BOARD NOTES THAT THE PARTIES WERE IN AGREEMENT THAT B. MICK WAS AN EMPLOYEE FOR PURPOSES OF THIS APPLICATION ON JUNE 16, 1969. INTERVENER #1 ALLEGED THAT THE OTHER THREE PERSONS WERE STILL EMPLOYEES OF THE RESPONDENT WHILE THE APPLICANT AND RESPONDENT CONTENDED OTHERWISE.

9. THE GENERAL PRINCIPLES APPLICABLE TO THE EMPLOYMENT STATUS OF STRIKING EMPLOYEES ARE DISCUSSED IN THE MCLEOD DECISION OF EVEN DATE (REFERRED TO SUPRA) AND THERE IS NO NEED TO REPEAT THEM HERE SINCE THE TWO CASES WERE ARGUED TOGETHER. IT IS NECESSARY, HOWEVER, TO DEAL SEPARATELY WITH EACH OF THE THREE INDIVIDUALS WHOSE STATUS IS IN QUESTION, THE FIRST OF WHOM IS ZAHRADKA. HE WAS NOT AVAILABLE TO GIVE EVIDENCE. THIS WAS ALSO TRUE OF MORNEAU IN THE MCLEOD CASE, BUT IN THAT CASE THE PARTIES WERE ABLE TO AGREE ON CERTAIN FACTS. THAT IS NOT THE CASE HERE BECAUSE THE STATEMENT RELATING TO ZAHRADKA IS ONLY PRECEDED BY THE WORDS "THE INFORMATION AVAILABLE TO THE PARTIES" AND PART OF THE STATEMENT MAY BE IN CONFLICT WITH EVIDENCE GIVEN BY BLACK, THE MANAGER OF THE RESPONDENT. BY AND LARGE THE EVIDENCE RELATING TO ZAHRADKA'S EMPLOYMENT STATUS IS NOT SATISFACTORY. FURTHERMORE, ZAHRADKA WAS ONLY A SHORT TERM EMPLOYEE, HAVING BEEN IN THE EMPLOY OF THE RESPONDENT FOR JUST OVER A MONTH PRIOR TO GOING ON STRIKE. IN THIS RESPECT HIS POSITION DIFFERS CONSIDERABLY FROM THE EMPLOYEES CONSIDERED IN THE MCLEOD CASE. IT IS READILY APPARENT THAT PERSONS WITH LONG TERM EMPLOYMENT RECORDS WILL BE LESS LIKELY TO ABANDON THEIR INTEREST IN THEIR JOBS THAN SHORT TERM EMPLOYEES, PARTICULARLY IN AN INDUSTRY WHERE LONG TERM SERVICE IS THE EXCEPTION RATHER THAN THE RULE. IN THE RESULT, WE ARE NOT SATISFIED THAT ZAHRADKA WAS AN EMPLOYEE OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION.

10. ON THE OTHER HAND, WE DO NOT HAVE TOO MUCH DIFFICULTY WITH RENNISON. HIS POSITION IS SIMILAR TO THAT OF BURELLA, WEGHER AND MORNEAU IN THE J. MCLEOD AND SONS LIMITED CASE. HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR TWO YEARS PRIOR TO THE STRIKE. HE IS A PERMANENT RESIDENT OF SAULT. THE RESPONDENT STILL HAS HIS UNEMPLOYMENT AND VACATION-WITH-PAY BOOKS. RENNISON HAS NOT TAKEN OTHER EMPLOYMENT BUT HAS EXPANDED A PART-TIME BUSINESS WHICH HE OPERATED WHILE WORKING FOR THE RESPONDENT. IN OTHER WORDS, HE IS PRESENTLY SELF-EMPLOYED. FOR PRESENT PURPOSES WE ARE PREPARED TO TREAT THIS AS EQUIVALENT TO OBTAINING EMPLOYMENT WITH ANOTHER EMPLOYER ALTHOUGH IT MAY BE THAT IN OTHER SITUATIONS A DISTINCTION MIGHT HAVE TO BE MADE. WHILE IT IS TRUE THAT RENNISON STATED THAT HE WOULD NOT BE ABLE TO LEAVE HIS PRESENT WORK IF THERE WAS A JOB IN PROCESS, THIS IS A SOMEWHAT SPECULATIVE MATTER WHICH, IN THE LIGHT OF ALL THE EVIDENCE WE ARE NOT PREPARED TO FIND AS DETERMINATIVE OF THE ISSUE. IN SHORT, THEN, WE ARE SATISFIED THAT RENNISON WAS AN EMPLOYEE OF THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION.

11. WE TURN NOW TO THE CASE OF ARNOLD MOSER. HE IS A PERMANENT RESIDENT OF SAULT STE. MARIE AND HAD WORKED FOR THE RESPONDENT FOR SIX MONTHS PRIOR TO THE STRIKE. HE WAS UNEMPLOYED FOR SIX MONTHS FOLLOWING THE STRIKE BECAUSE HE THOUGHT THE STRIKE WOULD BE SETTLED. HE THEN TOOK EMPLOYMENT AS ESCANABA, MICHIGAN. HE CLAIMS HE DID NOT QUIT THE EMPLOY OF THE RESPONDENT, BUT BLACK THE RESPONDENT'S MANAGER, STATED THAT MOSER WAS TERMINATED AT HIS OWN REQUEST IN DECEMBER, 1968. THE BOARD IS THUS FACED WITH WHAT APPEARS TO BE A CREDIBILITY PROBLEM

WITH RESPECT TO TWO WITNESSES IT HAS NEITHER HEARD NOR SEEN. IT MIGHT BE ARGUED THAT THE FACT THAT MOSER REQUESTED BOTH HIS UNEMPLOYMENT AND VACATION WITH PAY BOOKS TENDS TO SUPPORT BLACK'S STATEMENT. ON THE OTHER HAND, MOSER'S EXPLANATION FOR GETTING HIS UNEMPLOYMENT INSURANCE BOOK WAS THAT HE THOUGHT HE NEEDED IT FOR OUT-OF-TOWN WORK. THERE IS NO EXPLANATION AS TO WHY HE GOT HIS HOLIDAY PAY IN NOVEMBER, 1968. AFTER CONSIDERING ALL THE EVIDENCE, WE FIND OURSELVES IN DOUBT AS TO WHETHER MOSER WAS AN EMPLOYEE ON THE DATE OF THE MAKING OF THE APPLICATION. AS IN THE MCLEOD CASE, SUPRA, THAT DOUBT MUST BE RESOLVED AGAINST INTERVENER #1 WHO IS ASSERTING THAT MOSER IS AN EMPLOYEE. WE THEREFORE FIND THAT MOSER WAS NOT AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

12. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, WE FIND FURTHER THAT ON THE DATE OF THE MAKING OF THE APPLICATION K. ADAMS, E. BENNETT, G. GEROW, P. RICHER, B. MICK AND J. RENNISON WERE EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 6.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 23, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

15. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERVENER #1, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 508.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

16307-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. D. ESSON PLUMBING AND HEATING LIMITED (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 508 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (INTERVENER #2).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. BINNIE AND G. VANDEZANDE FOR THE APPLICANT; J. KELLEHER FOR THE RESPONDENT; L. ARNOLD, R. WATSON AND W. MAHAR FOR INTERVENER #1; AND G. FLOOK FOR INTERVENER #2.

DECISION OF THE BOARD: DECEMBER 10TH, 1969.

. . .

4. THE APPLICANT PROPOSED A BARGAINING UNIT DESCRIBED AS FOLLOWS:

ALL EMPLOYEES ENGAGED IN THE PLUMBING AND HEATING OPERATIONS OF THE RESPONDENT WORKING IN THE CITY OF SAULT STE. MARIE, THE TOWNSHIP OF PRINCE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF.

THE RESPONDENT PROPOSED A BARGAINING UNIT IN THE FOLLOWING TERMS:

ALL EMPLOYEES ENGAGED IN THE PLUMBING AND HYDRONIC HEATING OPERATIONS OF THE RESPONDENT IN THE AREA HEREINAFTER DEFINED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, SALES AND OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

DESCRIPTION OF AREA:

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INTERVENER #1 CURRENTLY HOLDS THE BARGAINING RIGHTS FOR:

ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTERS, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN THE JURISDICTIONAL AREA OF THE UNION AS PER MAP ATTACHED.

THIS IS THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #1, WHICH AGREEMENT CEASED TO OPERATE ON JULY 1, 1968 AND HAS NOT BEEN RE-NEGOTIATED. THE MAP REFERRED TO IN THE ABOVE DESCRIBED UNIT WAS NOT PRODUCED BEFORE THE BOARD ALTHOUGH IT WAS SUGGESTED THAT THE AREA COVERED BY THE MAP WAS THE CITY OF SAULT STE. MARIE TOGETHER WITH OUTLYING AREA STRETCHING TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON. WE WERE INFORMED, HOWEVER, THAT THE EMPLOYEES WORKING FOR THE RESPONDENT ON THE DATE OF THE MAKING OF THE APPLICATION WERE ALL ENGAGED IN SAULT STE. MARIE.

5. INTERVENER #1 TOOK THE POSITION THAT THE BARGAINING UNIT SHOULD BE THE SAME AS THE UNIT IN THE LAST COLLECTIVE AGREEMENT BETWEEN IT AND THE RESPONDENT. THE APPLICANT CONTENDED THAT THE UNIT SHOULD INCLUDE AN EMPLOYEE ENGAGED AS A COMBINATION TRUCK DRIVER AND STORE KEEPER, ON JOHN MOTRUK, WHO WAS NOT COVERED BY THE SAID COLLECTIVE AGREEMENT. A SIMILAR SITUATION AROSE IN THE COMPANION CASE OF J. MCLEOD AND SONS LIMITED, BOARD FILE NO. 16304-69-R. THERE IS HERE, HOWEVER, THE FURTHER PROBLEM THAT MOTRUK, WHEN ACTING AS A STORE KEEPER WOULD NOT FALL UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT SINCE WHEN ACTING IN SUCH CAPACITY HE IS NOT ENGAGED "AT THE SITE THEREOF" WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT. THERE IS ALSO THE PROBLEM OF THE GEOGRAPHIC AREA WHICH, AGAIN, WAS CONSIDERED IN THE MCLEOD CASE. FOR THE REASONS GIVEN IN THE DECISION OF EVEN DATE IN THAT CASE, THE BOARD FURTHER FINDS THAT ALL PLUMBER, STEAMFITTER, PIPE WELDER, PIPE FITTER, GAS FITTER JOURNEYMEN AND APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE AND ITS OUTLYING AREAS TO A POINT 5 MILES EAST OF BLIND RIVER, NORTH TO THE 49TH PARALLEL AND WEST TO MARATHON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT JOHN MOTRUK, CLASSIFIED AS A COMBINATION TRUCK DRIVER AND STORE KEEPER, IS NOT INCLUDED IN THE BARGAINING UNIT.

6. THERE WERE A NUMBER OF PERSONS EMPLOYED BY RESPONDENT ON JULY 12, 1968 WHO WENT OUT ON A LEGAL STRIKE ON THAT DATE. AMONG THESE WERE DAVID EDGAR, ALBERT DELUCO AND LARRY LECLAIR. THERE DOES NOT APPEAR TO BE ANY DISPUTE THAT EDGAR, WHO WAS RE-EMPLOYED BY THE RESPONDENT SUBSEQUENT TO THE DATE OF APPLICATION, WAS AN EMPLOYEE ON JUNE 16TH, 1969, THE DATE OF THE MAKING OF THE APPLICATION. IN ANY EVENT, THERE IS NO OTHER EVIDENCE ABOUT EDGAR AND HIS POSITION

IS THE SAME AS THAT OF B. MICK IN THE SMITH AND ELSON COMPANY LIMITED CASE, BOARD FILE No. 16306-69-R (DECISION OF EVEN DATE).

7. THE PARTIES AGREED TO STATEMENTS OF FACTS WITH RESPECT TO LECLAIR AND DELUCO WHO, APPARENTLY, WERE NOT AVAILABLE TO GIVE EVIDENCE. WHILE THESE STATEMENTS MAY NOT BE AS COMPLETE AS ONE WOULD LIKE, THEY REVEAL THAT THE POSITION OF LECLAIR AND DELUCO IS BASICALLY SIMILAR TO THAT OF MORNEAU, WEGHER AND BURELLA IN THE J. MCLEOD AND SONS LIMITED DECISION OF EVEN DATE, BOARD FILE No. 16304-69-R. FOR THE REASONS GIVEN IN THAT DECISION WE FIND THAT LECLAIR AND DELUCO WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON JUNE 16TH, 1969, THE DATE OF THE MAKING OF THE APPLICATION.

8. BASED ON THE ABOVE FINDINGS AND THE OTHER EVIDENCE RESPECTING EMPLOYEES AT WORK ON JUNE 16TH, 1969, THE BOARD FINDS THAT ON THAT DATE G. HATT, N. SENNECKE, D. EDGAR, A. DELUCO AND L. LECLAIR WERE EMPLOYEES INCLUDED IN THE BARGAINING UNIT. THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR TWO OF THESE EMPLOYEES. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 23, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. IN THESE CIRCUMSTANCES IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE EMPLOYMENT STATUS OF H. COSTELLO, G. GREGOIRE, P. LEMAY AND N. MCNEIL. NOR IS IT NECESSARY TO DEAL WITH A NUMBER OF OTHER ISSUES RAISED BY THE TWO INTERVENERS.

10. THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - TERMINATION

16921-69-R: COUNCIL OF CONCRETE FORMING TRADE UNIONS (APPLICANT) V. CANADIAN CONCRETE FORMING UNION No. 1 (RESPONDENT) V. TORONTO FORMING (1965) LTD., (INTERVENER)

BEFORE: J. H. BROWN Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: RAYMOND KOSKIE APPEARING FOR THE APPLICANT; ROBIN CUMINE AND B. ZANINI APPEARING FOR THE RESPONDENT; MARTIN LEVINSON APPEARING FOR THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562, CONCRETE FORMING DIVISION; GEORGE S. P. FERGUSON, Q.C., APPEARING FOR THE INTERVENER AND THE FIVE COMPANIES NAMED IN PARAGRAPH 2 KNOWN AS THE "DI LORENZO GROUP"; JOHN P. SANDERSON APPEARING FOR THE NINE COMPANIES NAMED IN PARAGRAPH 3 AND THE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO.

DECISION OF THE BOARD: DECEMBER 9, 1969.

1. THE APPLICANT FILED A TOTAL OF TWENTY-SIX APPLICATIONS FOR TERMINATION OF BARGAINING RIGHTS UNDER SECTION 45A OF THE LABOUR RELATIONS ACT.

2. THE COMPANIES AFFECTED BY THE APPLICATIONS ARE TORONTO FORMING (1965) LTD., THE INTERVENER IN THE INSTANT APPLICATION, ANOTHER APPLICATION WITH RESPECT TO THE SAME COMPANY (BOARD FILE NO. 16920-69-R); DI LORENZO CONSTRUCTION CO. (BOARD FILE NO. 16922-69-R); N. DI LORENZO CONSTRUCTION CO. LTD. (BOARD FILE NO. 16923-69-R); DILCRANE EQUIPMENT LIMITED (BOARD FILES NOS. 16924-69-R AND 16925-69-R); HAMILTON FORMING LIMITED (BOARD FILES NOS. 16926-69-R AND 16927-69-R) AND DILCON CONSTRUCTION LIMITED (BOARD FILES NOS. 16928-69-R AND 16929-69-R). THESE SIX COMPANIES ARE KNOWN AS THE "DI LORENZO GROUP".

3. THE REMAINING NINE COMPANIES ARE REGIS CONCRETE FORMING LIMITED (BOARD FILES NOS. 16934-69-R AND 16935-69-R); ACU FORMING LIMITED (BOARD FILES NOS. 16936-69-R AND 16937-69-R); RELI FORMS LIMITED (BOARD FILES NOS. 16938-69-R AND 16939-69-R); FAGA FORMS (BOARD FILES NOS. 16940-69-R AND 16941-69-R); FALCON STRUCTURAL FORMING LIMITED (BOARD FILE NO. 16942-69-R); FALCON FORMING (BOARD FILES NOS. 16943-69-R AND 16944-69-R); DI MIRO CONSTRUCTION (BOARD FILE NO. 16945-69-R); ETOBICOKE FORMING (BOARD FILES NOS. 16946-69-R AND 16947-69-R) AND TRIPLE F FORMING LIMITED (BOARD FILES NOS. 16948-69-R AND 16949-69-R).

4. IN THE CASE OF TORONTO FORMING (1965) LIMITED (BOARD FILE NO. 16920-69-R); DILCRANE EQUIPMENT LIMITED (BOARD FILE NO. 16924-69-R); HAMILTON FORMING LTD. (BOARD FILE NO. 16916-69-R); DILCON CONSTRUCTION LIMITED (BOARD FILE NO. 16928-69-R); REGIS CONCRETE FORMING LIMITED (BOARD FILE NO. 16935-69-R); ACU FORMING LIMITED (BOARD FILE NO. 16936-69-R); RELI FORMS LIMITED (BOARD FILE NO. 16939-69-R); FAGA FORMS (BOARD FILE NO. 16940-69-R); FALCON FORMING (BOARD FILE NO. 16943-69-R); ETOBICOKE FORMING (BOARD FILE NO. 16947-69-R) AND TRIPLE F FORMING LIMITED (BOARD FILE NO. 16949-69-R), THE APPLICANT NAMED BOTH THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562, CONCRETE FORMING DIVISION (HEREINAFTER REFERRED TO AS LOCAL 562) AND THE CANADIAN CONCRETE FORMING UNION NO. 1 (HEREINAFTER REFERRED TO AS FORMING UNION NO. 1) AS RESPONDENTS.

5. IN THE CASE OF DI LORENZO CONSTRUCTION Co. (BOARD FILE No. 16922-69-R); No. DI LORENZO CONSTRUCTION Co. LTD. (BOARD FILE No. 16923-69-R); DILCRANE EQUIPMENT LTD. (BOARD FILE No. 16925-69-R); HAMILTON FORMING LTD. (BOARD FILE No. 16927-69-R); DILCON CONSTRUCTION Co. LIMITED (BOARD FILE No. 16929-69-R); REGIS CONCRETE FORMING LIMITED (BOARD FILE No. 16934-69-R); AGU FORMING LIMITED (BOARD FILE No. 16937-69-R); RELI FORMS LIMITED (BOARD FILE No. 16938-69-R); FAGA FORMS (BOARD FILE No. 16941-69-R); FALCON STRUCTURAL FORMING LIMITED (BOARD FILE No. 16942-69-R); FALCON FORMING (BOARD FILE No. 16944-69-R); DI MIRO FORMING (BOARD FILE No. 16945-69-R); ETOBICOKE FORMING (BOARD FILE No. 16946-69-R); TRIPLE F FORMING LIMITED (BOARD FILE No. 16948-69-R) AND THE INSTANT APPLICATION, ONLY THE FORMING UNION No. 1 WAS NAMED AS A RESPONDENT.

6. NONE OF THE ABOVE APPLICATIONS WERE CONSOLIDATED. THE ALLEGATIONS MADE BY THE APPLICANT AGAINST THE TWO RESPONDENT UNIONS AND THE NAMED COMPANIES IN THE BOARD FILES SPECIFIED IN PARAGRAPH 4 IN ALL ESSENTIAL RESPECTS ARE THE SAME. SIMILARLY, THE ALLEGATIONS MADE BY THE APPLICANT AGAINST THE SOLE RESPONDENT, FORMING UNION NO. 1, THE INSTANT INTERVENER AND THE NAMED COMPANIES IN THE BOARD FILES SPECIFIED BY NUMBER IN PARAGRAPH 5 IN ALL ESSENTIAL RESPECTS ARE THE SAME. THE ISSUES CONFRONTING THE BOARD WERE COMMON TO ALL OF THE APPLICATIONS. THE BOARD ACCORDINGLY DEALT WITH THE APPLICATIONS SIMULTANEOUSLY.

7. IN THE APPLICATIONS IN WHICH LOCAL 562 WAS NAMED AS A RESPONDENT AS WELL AS FORMING UNION No. 1 THE APPLICANT MADE CERTAIN SPECIFIC ALLEGATIONS AGAINST LOCAL 562 AND THE COMPANIES NAMED IN THOSE APPLICATIONS. THE ALLEGATIONS PARTICULARLY RELATED TO THE CIRCUMSTANCES SURROUNDING THE EXECUTION OF A PORPORTED COLLECTIVE AGREEMENT ON NOVEMBER 4, 1968 BY LOCAL 562 AND THE COMPANIES NAMED IN THE APPLICATIONS. COUNSEL FOR LOCAL 562, HOWEVER, ADVISED THE BOARD AT THE HEARING THAT LOCAL 562 WAS NOT ENTITLED TO AND DID NOT IN FACT REPRESENT ANY OF THE EMPLOYEES OF ANY OF THE SIGNATORY COMPANIES IN THE BARGAINING UNIT COVERED BY THE AGREEMENT. COUNSEL ACCORDINGLY ADMITTED THAT THE AGREEMENT WAS VOID AD INITIO AND HAD NO BINDING EFFECT UPON THE PARTIES TO IT.

8. WITH RESPECT TO FORMING UNION No. 1 AND THE COMPANIES NAMED IN THE BOARD FILES LISTED IN PARAGRAPH 5, AS WELL AS THE PRESENT INTERVENER, HOWEVER, THE APPLICANT MADE THE FOLLOWING ALLEGATIONS:-
(1) THE NAMED COMPANIES ACTIVELY SUPPORTED AND ASSISTED FORMING UNION No. 1 AS WELL AS CONTRIBUTING FINANCIAL AND OTHER SUPPORT TO THAT UNION (2) THE NAMED COMPANIES AND PERSONS EMPLOYED BY THEM IN A SUPERVISORY OR MANAGERIAL CAPACITY AND WHO WERE REGARDED AS LIKELY TO

AFFECT THE EMPLOYMENT STATUS OF THE EMPLOYEES INFLUENCED THEM TO SUPPORT FORMING UNION No. 1 AND TO BECOME MEMBERS OF THAT UNION. (3) THE NAMED COMPANIES ALLOWED REPRESENTATIVE OF FORMING UNION No. 1 TO PERSUADE THEIR EMPLOYEES TO APPLY FOR MEMBERSHIP IN THAT UNION ON THE PROJECTS OF THE NAMED COMPANIES DURING REGULAR WORKING HOURS AND IN FULL VIEW OF PERSONS EMPLOYED BY THE COMPANIES IN A SUPERVISORY CAPACITY AND WHO WERE LIKELY TO AFFECT THE EMPLOYMENT STATUS OF THE COMPANIES' EMPLOYEES. THE APPLICANT FILED PARTICULARS IN SUPPORT OF THE ABOVE ALLEGATIONS. FORMING UNION No. 1 AND THE NAMED COMPANIES DENIED THE ABOVE ALLEGATIONS.

9. ALL OF THESE ACTIVITIES ARE ALLEGED BY THE APPLICANT TO HAVE OCCURRED DURING A PERIOD OF APPROXIMATELY A MONTH AND A HALF PRIOR TO THE TIME THE NAMED COMPANIES AND FORMING UNION No. 1 ENTERED INTO A COLLECTIVE AGREEMENT ON JULY 16, 1969. BECAUSE OF THE ABOVE ACTIVITIES THE APPLICANT SUBMITS THAT THE EVIDENCE OF MEMBERSHIP SIGNED BY EMPLOYEES OF THE NAMED COMPANIES DOES NOT REFLECT THE TRUE AND VOLUNTARY WISHES OF THE EMPLOYEES CONCERNED AND THEREFORE OUGHT NOT TO BE GIVEN ANY WEIGHT. THE APPLICANT ACCORDINGLY FURTHER SUBMITS THAT AT THE TIME THE ABOVE REFERRED TO COLLECTIVE AGREEMENT WAS ENTERED INTO, FORMING UNION No. 1 WAS NOT ENTITLED TO REPRESENT THESE EMPLOYEES AND THAT THE BOARD, PURSUANT TO SECTION 45A OF THE ACT, SHOULD MAKE A DECLARATION TO THAT EFFECT.

10. COUNSEL FOR FORMING UNION No. 1 INITIALLY ASSERTED THAT THE APPLICANT IS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT AND THEREFORE WAS NOT IN A POSITION TO FILE THE APPLICATIONS. IN THE FORMALL LIMITED CASE, OLRB M.R. MARCH 1969 P. 1290, THE BOARD FOUND THAT THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FOUND THAT CERTAIN SPECIFIED LOCAL UNIONS OF A NUMBER OF CONSTRUCTION TRADES WERE CONSTITUENT UNIONS OF THE APPLICANT. THE BOARD FURTHER FOUND THAT THE APPLICANT WAS A COUNCIL OF TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(E) OF THE ACT. THE BOARD IN THAT CASE WAS ALSO SATISFIED THAT THE CONSTITUENT UNIONS OF THE APPLICANT HAD VESTED APPROPRIATE AUTHORITY IN THE APPLICANT TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF A BARGAINING AGENT, PURSUANT TO SECTION 8A(1) OF THE ACT (SEE ALSO MERIDIAN DEVELOPMENTS CASE, BOARD FILE No. 16326-69-R). THE BOARD ACCORDINGLY OVERRULED THIS OBJECTION OF COUNSEL AND FOUND THAT THE APPLICANT HAD THE STATUS OF A TRADE UNION.

11. COUNSEL FOR FORMING UNION No. 1 THEREUPON SUBMITTED THAT THE APPLICANT WAS WITHOUT STATUS TO BRING THE APPLICATIONS AS IT REPRESENTED NO EMPLOYEES OF ANY OF THE NAMED COMPANIES IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT DATED JULY 16, 1969 ON THE DATE OF THE MAKING OF THE TWENTY-SIX APPLICATIONS BY THE APPLICANT, WHICH

IN ALL CASES WAS NOVEMBER 3, 1969. SECTION 45A(1) OF THE ACT READS:

WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

12. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF EMPLOYEES WHO WERE IN THE EMPLOY OF THE FOLLOWING COMPANIES AS OF THE DATE OF APPLICATION: N. DI LORENZO CONSTRUCTION COMPANY LIMITED (BOARD FILE No. 16923-69-R); DILCON CONSTRUCTION LIMITED (BOARD FILE No. 16929-69-R); REGIS CONCRETE FORMING LIMITED (BOARD FILE No. 16934-69-R); ACU FORMING LIMITED (BOARD FILE No. 16937-69-R); RELI FORMS LIMITED (BOARD FILE No. 16938-69-R); FALCON STRUCTURAL FORMING LIMITED (BOARD FILE No. 16942-69-R); ETOBICOKE FORMING (BOARD FILE No. 16946-69-R); TRIPLE F FORMING LIMITED (BOARD FILE No. 16948-69-R) AND EMPLOYEES OF THE INTERVENER IN THE INSTANT APPLICATION, TORONTO FORMING (1965) LTD.

13. THE EVIDENCE OF MEMBERSHIP FOR EACH OF THE EMPLOYEES OF THE ABOVE COMPANIES TAKES THE FOLLOWING FORM:

COUNCIL OF CONCRETE FORMING TRADE UNIONS

APPLICATION FOR
MEMBERSHIP

DATE -----

ORGANIZATION ----- LOCAL No. ----- AFL-CIO
HEREINAFTER CALLED THE UNION.

I HEREBY APPLY FOR MEMBERSHIP IN THE UNION. IF
ACCEPTED AS A MEMBER I PROMISE TO ABIDE BY THE BY-
LAWS AND THE CONSTITUTION OF THE UNION OF MY OWN
FREE WILL AND ACCORD. I AUTHORIZE THE UNION TO BE

MY EXCLUSIVE COLLECTIVE BARGAINING AGENT IN ALL
MATTERS PERTAINING TO RATES OF WAGES, HOURS OF WORK
AND ANY OTHER CONDITION OF EMPLOYMENT. I FURTHER
AUTHORIZE AND CONSENT TO THE COUNCIL OF CONCRETE
FORMING TRADE UNIONS ASSUMING AND CARRYING OUT THE
FUNCTION OF COLLECTIVE BARGAINING AGENT ON MY
BEHALF IN PLACE AND INSTEAD OF THE UNION.

.....

SIGNATURE OF WITNESS

.....

SIGNATURE OF APPLICANT

PLEASE PRINT THE FOLLOWING IN BLOCK LETTERS:

NAME -----

PHONE -----

ADDRESS -----

EMPLOYER -----

EMPLOYER'S ADDRESS -----

AUTHORIZATION

ON BEHALF OF THE UNION I HEREBY AUTHORIZE THE
COUNCIL OF CONCRETE FORMING TRADE UNIONS TO CARRY
OUT THE DUTIES AND DISCHARGE THE RESPONSIBILITIES
OF EXCLUSIVE BARGAINING AGENT IN ALL MATTERS
PERTAINING TO RATES OF WAGES, HOURS OF WORK AND
ANY OTHER CONDITION OF EMPLOYMENT ON BEHALF OF THE
APPLICANT FOR MEMBERSHIP NAMED IN THIS APPLICATION.

AUTHORIZED SIGNATORY FOR THE UNION

\$ ---- INITIATION FEE RECEIVED BY -----

SIGNATURE

I CONFIRM PAYMENT OF INITIATION FEE -----

SIGNATURE OF APPLICANT

IN ALL CASES THE DATES SHOWN ON THE APPLICATIONS FOR MEMBERSHIP ARE
WITHIN A SIX MONTH PERIOD OF THE DATE OF THE MAKING OF THE TERMINA-
TION APPLICATIONS. INSERTED IN THE BLANK SPACES IN THE FIRST
SENTENCE IS BOTH THE NAME AND LOCAL NUMBER OF ONE OF THE CONSTITUENT
UNIONS OF THE APPLICANT COUNCIL. THE SIGNATURES OF THE PERSONS
INDICATED APPEAR ON EACH CARD IN THE PLACES INDICATED AND THE
INFORMATIONAL PART OF EACH CARD IS COMPLETED.

14. COUNSEL FOR THE RESPONDENT SUBMITTED THAT SINCE THE EMPLOYEES OF THE COMPANIES CONCERNED APPLIED FOR MEMBERSHIP IN ONE OF THE CONSTITUENT UNIONS OF THE COUNCIL AND NOT FOR MEMBERSHIP IN THE COUNCIL ITSELF, THE APPLICANT DOES NOT REPRESENT ANY OF THE EMPLOYEES OF THE COMPANIES NAMED IN PARAGRAPH 12 IN THE BARGAINING UNIT CONTAINED IN THE COLLECTIVE AGREEMENT DATED JULY 16, 1969. COUNSEL ARGUES THAT THE FACT THAT THE APPLICATIONS FOR MEMBERSHIP AND THE AUTHORIZED SIGNATORIES FOR THE CONSTITUENT UNIONS BOTH AUTHORIZE THE APPLICANT COUNCIL TO ACT AS THEIR BARGAINING AGENT DOES NOT REMEDY THIS DEFECT IN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

15. COUNSEL FOR THE APPLICANT SUBMITTED THAT SINCE THE APPLICANT IS A CERTIFIED COUNCIL OF TRADE UNIONS MADE UP OF CONSTITUENT LOCAL UNIONS THE EVIDENCE OF MEMBERSHIP IS ENTIRELY PROPER AND MEETS THE BOARD'S REQUIREMENTS. COUNSEL FURTHER SUBMITTED THAT THE BOARD HAD ACCEPTED THE SAME FORM OF MEMBERSHIP EVIDENCE WHEN IT CERTIFIED THE APPLICANT IN FORMALL LIMITED AND MERIDIAN DEVELOPMENT CASES (SUPRA). COUNSEL FOR THE APPLICANT, IN ADDITION, CITED DECISIONS OF THE BOARD WHEREIN THE BOARD HELD THAT THE EVIDENCE REQUIRED OF A TRADE UNION TO SHOW THAT IT REPRESENTS EMPLOYEES IN A BARGAINING UNIT UNDER SECTION 45A IS LESS STRINGENT THAN IN THE CASE OF AN APPLICATION FOR CERTIFICATION.

16. HAVING CONSIDERED THE REPRESENTATIONS OF COUNSEL, THE BOARD RULED THAT THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT CLEARLY SATISFIED THE REQUIREMENTS OF SECTION 45A(1) OF THE ACT. THE BOARD ACCORDINGLY RULED THAT THE APPLICANT HAD STATUS TO MAKE THE APPLICATIONS LISTED IN PARAGRAPH 12 AND THAT THE BOARD HAD JURISDICTION TO ENTERTAIN THEM.

17. THE APPLICANT DID NOT FILE ANY EVIDENCE OF MEMBERSHIP ON BEHALF OF EMPLOYEES WHO WERE IN THE EMPLOY OF THE FOLLOWING COMPANIES AS OF THE DATE OF APPLICATION: DI LORENZO CONSTRUCTION CO. (BOARD FILE NO. 16922-69-R); DILCRANE EQUIPMENT LTD. (BOARD FILE NO. 16925-69-R); HAMILTON FORMING LIMITED (BOARD FILE NO. 16927-69-R); FAGA FORMS (BOARD FILE NO. 16941-69-R); FALCON FORMING (BOARD FILE NO. 16944-69-R) AND DI MIRO CONSTRUCTION (BOARD FILE NO. 16945-69-R). THE BOARD THEREFORE RULED THAT THE APPLICANT HAD NO STATUS TO FILE THE APPLICATIONS LISTED IN THIS PARAGRAPH AND THAT THE BOARD WAS WITHOUT JURISDICTION TO HEAR THEM. THESE APPLICATIONS ACCORDINGLY WERE DISMISSED.

18. THE APPLICANT MADE TWO SEPARATE APPLICATIONS WITH RESPECT TO ELEVEN OF THE FIFTEEN NAMED COMPANIES. IN ONE OF THE APPLICATIONS RELATING TO EACH OF THE ELEVEN COMPANIES, ONLY FORMING UNION No. 1 IS NAMED AS THE RESPONDENT. IN THE OTHER APPLICATIONS

REGARDING EACH OF THE ELEVEN COMPANIES, BOTH FORMING UNION No. 1 AND LOCAL 562 ARE NAMED AS RESPONDENTS. IN LIGHT OF THE ADMISSIONS MADE BY COUNSEL FOR LOCAL 562, AS OUTLINED IN PARAGRAPH 7, NO USEFUL PURPOSE IS SERVED IN THE BOARD CONCERNING ITSELF FURTHER WITH THE LATTER ELEVEN APPLICATIONS. THE APPLICATIONS LISTED IN PARAGRAPH 4 ACCORDINGLY ARE TERMINATED.

19. UPON THE BOARD RULING THAT IT HAD JURISDICTION TO ENTERTAIN THE APPLICATIONS LISTED IN PARAGRAPH 12, COUNSEL FOR FORMING UNION No. 1 REQUESTED THAT THE BOARD ADJOURN THE HEARING OF THESE APPLICATIONS IN ORDER TO ENABLE FORMING UNION No. 1 TO FILE A NOTICE OF MOTION IN LIEU OF A WRIT OF PROHIBITION TO PROHIBIT THE BOARD FROM PROCEEDING WITH THE HEARING OF THE APPLICATIONS. THE GROUND UPON WHICH COUNSEL STATED THAT HE INTENDED TO MAKE HIS MOTION WAS THAT THE BOARD ERRED IN ITS RULING CONTAINED IN PARAGRAPH 16 AND, IN FACT, WAS WITHOUT JURISDICTION TO ENTERTAIN THE NINE REMAINING APPLICATIONS.

20. UPON CONSIDERING THE REPRESENTATIONS OF COUNSEL, THE BOARD RULED THAT SINCE REPRESENTATION ISSUES WERE INVOLVED IN THE APPLICATIONS AND THAT THERE WERE STILL OTHER PRELIMINARY MATTERS BEFORE THE BOARD IN THE APPLICATIONS, AND HAVING REGARD TO THE DECISION OF MR. JUSTICE HAINES IN THE ARMSTRONG TRANSPORT CASE (1964) 1 O. R. 358; 64 CLLC 804, THE BOARD INTENDED TO PROCEED WITH THE HEARING OF THE APPLICATIONS.

21. COUNSEL FOR FORMING UNION No. 1 NEXT ASSERTED THAT THE APPLICANT HAD NOT PROVIDED ADEQUATE PARTICULARS OF ITS ALLEGATIONS AGAINST FORMING UNION No. 1 SO AS TO ENABLE HIM TO PROPERLY PREPARE HIS CASE. AFTER ENTERTAINING THE REPRESENTATIONS OF COUNSEL FOR FORMING UNION No. 1 AND COUNSEL FOR THE APPLICANT, THE BOARD RULED THAT THE APPLICANT HAS SUPPLIED SUFFICIENT PARTICULARS OF ITS ALLEGATIONS. THE BOARD ADVISED COUNSEL FOR FORMING UNION No. 1, HOWEVER, THAT SHOULD THE APPLICANT ADDUCE EVIDENCE IN SUPPORT OF ITS ALLEGATIONS WHICH TOOK COUNSEL BY SURPRISE, THE BOARD WOULD ENTERTAIN ANY MOTION WHICH HE DEEMED APPROPRIATE TO MAKE IN THE CIRCUMSTANCES.

22. COUNSEL FOR THE INTERVENER AND THE FIVE OTHER COMPANIES OF THE "DI LORENZO GROUP" THEREUPON SUBMITTED THAT THE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO (HEREINAFTER REFERRED TO AS THE ASSOCIATION), WHICH ORGANIZATION IS NAMED IN THE STYLE OF CAUSE OF THE JULY 16, 1969 COLLECTIVE AGREEMENT AND AGAINST WHOM ALLEGATIONS WERE MADE BY THE APPLICANT, SHOULD HAVE BEEN NOTIFIED OF THESE PROCEEDINGS. COUNSEL FOR THE INTERVENER PROPOSED THAT THE HEARING ON THE APPLICATIONS BY ADJOURNED FOR AN APPROPRIATE PERIOD OF TIME SO THAT THE ASSOCIATION COULD BE ADDED AS A PARTY OR AT LEAST BE NOTIFIED OF THE PROCEEDINGS AND HAVE AN OPPORTUNITY TO PARTICIPATE IN THEM, SHOULD IT SO DESIRE. COUNSEL FOR THE APPLICANT NOTED THAT WHILE THE

ASSOCIATION WAS IN THE STYLE OF CAUSE AS A PARTY, ONLY THE NAMED COMPANIES AND NOT THE ASSOCIATION ITSELF WERE SIGNATORIES TO THE AGREEMENT. FURTHER, COUNSEL FOR THE APPLICANT ASSERTED THAT THE ASSOCIATION WAS MERELY A "CONDUIT" WITH RESPECT TO THE ACTIVITIES OF THE NAMED COMPANIES AND THAT THE APPLICANT'S ALLEGATIONS WERE DIRECTED NOT AT THE ASSOCIATION BUT RATHER TO THE ACTIVITIES OF THE NAMED COMPANIES AND FORMING UNION No. 1.

23. COUNSEL FOR THE COMPANIES LISTED IN PARAGRAPH 3 ADVISED THE BOARD, AFTER CONSULTATION WITH RESPONSIBLE OFFICERS OF THE ASSOCIATION, THAT WHILE HE BELIEVED THE POSITION OF COUNSEL FOR THE "DI LORENZO GROUP" TO BE TECHNICALLY CORRECT, THE ASSOCIATION HAD BEEN AWARE OF THE APPLICANT'S ALLEGATIONS FOR SOME TIME AND DID NOT DESIRE AN ADJOURNMENT OF THE PROCEEDINGS NOR DID IT WISH TO FILE AN INTERVENTION. COUNSEL FURTHER ADVISED THE BOARD THAT HE HAD BEEN RETAINED TO REPRESENT THE INTEREST OF THE ASSOCIATION IN THE PROCEEDINGS AND THAT THE ASSOCIATION WAS CONTENT TO HAVE THE BOARD CONTINUE WITH THE HEARING.

24. THE APPLICANT HAVING ESTABLISHED ITS STATUS TO BRING THE APPLICATIONS WITH RESPECT TO THE NINE COMPANIES NAMED IN PARAGRAPH 12, THE BOARD, PURSUANT TO THE PROVISIONS OF SUB-SECTION (3) OF SECTION 45A, CALLED UPON COUNSEL FOR FORMING UNION No. 1 AND COUNSEL FOR THE NAMED COMPANIES TO DISCHARGE THE ONUS ON THEM OF ESTABLISHING THAT FORMING UNION No. 1 WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE NAMED COMPANIES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT OF JULY 16, 1969 WAS ENTERED INTO BY THE PARTIES.

25. COUNSEL FOR THE THREE COMPANIES IN THE "DI LORENZO GROUP", NAMELY, THE INTERVENER, DILCON CONSTRUCTION LIMITED AND N. DI LORENZO CONSTRUCTION CO. LTD., (THE APPLICATIONS WITH RESPECT TO WHICH THE BOARD FOUND IT HAD JURISDICTION) TOLD THE BOARD THAT IT HAD NOT TAKEN ANY FORMAL STEPS TO ESTABLISH THE NUMERICAL POSITION OF FORMING UNION No. 1 AT THE TIME THE THREE COMPANIES SIGNED THE JULY 16, 1969 COLLECTIVE AGREEMENT. ACCORDINGLY, COUNSEL ADVISED THE BOARD THAT THE SAID COMPANIES COULD NOT DISCHARGE THE ONUS IMPOSED ON THEM BY SUBSECTION (3) OF SECTION 45A. COUNSEL FOR THE SIX REMAINING COMPANIES, WITH RESPECT TO WHICH THE BOARD FOUND IT HAD JURISDICTION, NAMELY, FALCON STRUCTURAL FORMING LIMITED, AGU FORMING LIMITED, REGIS CONCRETE FORMING LIMITED, ETOBICOKE FORMING, RELI FORMS LIMITED AND TRIPLE F FORMING LIMITED, ADOPTED THE SAME POSITION WITH RESPECT TO THESE COMPANIES.

26. COUNSEL FOR FORMING UNION No. 1 ORIGINALLY ADVISED THE BOARD THAT HE WAS PREPARED TO PROCEED TO ESTABLISH THE FORMING UNION No. 1 WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE ABOVE NAMED COMPANIES IN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT OF JULY 16, 1969. COUNSEL, IN FACT, HAD ALREADY FILED WITH THE BOARD MEMBERSHIP CARDS FOR EMPLOYEES OF THOSE COMPANIES. COUNSEL FOR THE

"DI LORENZO GROUP" AND COUNSEL FOR THE REMAINING COMPANIES, HOWEVER, HAD NOT FILED LISTS OF BARGAINING UNIT EMPLOYEES FOR THE NINE COMPANIES AS OF JULY 16, 1969, THE DATE THE COLLECTIVE AGREEMENT WAS EXECUTED BY FORMING UNION No. 1 AND THE SAID COMPANIES. THE BOARD ADVISED COUNSEL FOR FORMING UNION No. 1 THAT IT WOULD FORTHWITH APPOINT EXAMINERS OF THE BOARD TO SECURE THESE LISTS FROM THE COMPANIES. THE BOARD INFORMED THE PARTIES, HOWEVER, THAT IN THE INTERIM PERIOD FORMING UNION No. 1, WHICH HAS NEVER BEEN CERTIFIED BY THE BOARD, WOULD BE REQUIRED TO PROVE ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF THE ACT. ONE OF THE ALLEGATIONS OF THE APPLICANT, WE WOULD ADD, IS THAT FORMING UNION No. 1 IS NOT A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

27. COUNSEL FOR THE "DI LORENZO GROUP" SUBMITTED THAT BY THE WORDING OF SUBSECTION (3) OF SECTION 45A, IF ONE OF THE PARTIES TO A COLLECTIVE AGREEMENT WAS UNABLE TO DISCHARGE THE ONUS ON IT, IT WAS NOT OPEN TO THE OTHER PARTY TO UNILATERALLY DISCHARGE THE ONUS. SUBSECTION (3) READS:

ON AN APPLICATION UNDER SUBSECTION 1, THE ONUS OF ESTABLISHING THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO RESTS ON THE PARTIES TO THE AGREEMENT.

COUNSEL FOR THE OTHER PARTIES TO THE PROCEEDINGS DID NOT SUPPORT THE POSITION OF COUNSEL FOR THE "DI LORENZO GROUP". COUNSEL FOR FORMING UNION No. 1 VIGOROUSLY PROTESTED THE SUGGESTED INTERPRETATION, ARGUING THAT IT WOULD BE TOTALLY UNJUST TO PERMIT THE EMPLOYER OR EMPLOYERS TO A COLLECTIVE AGREEMENT TO THWART OR PREVENT THE TRADE UNION WHICH WAS THE OTHER PARTY TO THE AGREEMENT FROM ESTABLISHING ITS RIGHT TO REPRESENT THE EMPLOYEES OF THE EMPLOYER OR EMPLOYERS COVERED BY THE AGREEMENT. THE BOARD REJECTED THE SUBMISSION OF COUNSEL FOR THE "DI LORENZO GROUP" AND RULED THAT COUNSEL FOR FORMING UNION No. 1 HAD THE UNILATERAL RIGHT TO ESTABLISH THAT THE UNION REPRESENTED THE EMPLOYEES OF THE NINE COMPANIES IN THE BARGAINING UNIT ON THE RELEVANT DATE.

28. COUNSEL FOR FORMING UNION No. 1 ADVISED THE BOARD THAT UPON FURTHER INSTRUCTIONS FROM HIS CLIENT, HE WAS REVERSING HIS POSITION AND THAT FORMING UNION No. 1 WAS BOTH UNWILLING AND UNABLE TO DISCHARGE THE ONUS ON IT UNDER SUBSECTION (3) OF SECTION 45A. THE BOARD STATED THAT SINCE NONE OF THE PARTIES TO THE COLLECTIVE AGREEMENT WAS PREPARED TO DISCHARGE THE ONUS ON THEM, THE APPLICANT WAS ENTITLED TO THE DECLARATIONS THAT IS WAS SEEKING, NAMELY THAT AT THE TIME THE JULY 16, 1969 COLLECTIVE AGREEMENT WAS ENTERED INTO FORMING UNION No. 1

WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES OF THE NINE COMPANIES IN THE BARGAINING UNIT.

29. COUNSEL FOR THE APPLICANT SUBMITTED THAT NOTWITHSTANDING ITS ENTITLEMENT TO THE DECLARATION, HE STRONGLY URGED THE BOARD TO PERMIT HIM TO ADDUCE EVIDENCE IN SUPPORT OF THE APPLICANT'S ALLEGATIONS AGAINST FORMING UNION No. 1 AND THE COMPANIES CONCERNED. COUNSEL FOR FORMING UNION No. 1 AND THE COMPANIES VIGOROUSLY OPPOSED THE REQUEST OF COUNSEL FOR THE APPLICANT.

30. THE BOARD CONSIDERED THE REPRESENTATIONS OF THE PARTIES AND THEN MADE THE FOLLOWING STATEMENTS AND RULINGS WHICH WERE READ BY THE CHAIRMAN OF THE PANEL AT THE HEARING:

COUNSEL FOR THE COMPANIES CONCERNED IN THESE APPLICATIONS HAVE ADVISED THE BOARD THAT THE COMPANIES THEY REPRESENT ARE UNABLE TO DISCHARGE THE ONUS PLACE UPON THEM BY SUBSECTION (3) OF SECTION 45A OF THE ACT. THAT IS TO SAY COUNSEL ADVISED THE BOARD THAT NONE OF THE COMPANIES WHICH THEY REPRESENT MADE ANY FORMAL INQUIRIES OF FORMING UNION No. 1 AS TO WHETHER IT WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE COMPANIES AT THE TIME THE COMPANIES ENTERED INTO THE AGREEMENT DATED JULY 16, 1969.

COUNSEL FOR FORMING UNION No. 1 HAS ADVISED THE BOARD THAT IT IS UNABLE AND UNWILLING TO DISCHARGE THE ONUS PLACE UPON IT BY SUBSECTION (3) OF SECTION 45A, NOTWITHSTANDING THE FACT THAT IT FILED EVIDENCE OF MEMBERSHIP AND THAT THE LIST OF EMPLOYEES IN THE BARGAINING UNIT FOR THE COMPANIES CONCERNED AT THE RELEVANT TIME CAN BE MADE AVAILABE TO THE BOARD. WE WOULD ADD THAT UNTIL THIS MORNING'S HEARING, FORMING UNION No. 1 HAS CONSISTENTLY MAINTAINED THE POSITION THAT IT WAS, IN FACT, ENTITLED TO REPRESENT THE EMPLOYEES OF THE COMPANIES CONCERNED IN THE BARGAINING UNIT AT THE TIME IT ENTERED INTO THE AGREEMENT OF JULY 16, 1969.

IN OUR VIEW, THE POSITION NOW TAKEN BY FORMING UNION No. 1 MAY WELL BE OPEN TO THE CONSTRUCTION THAT IN DECLINING TO AT LEAST ATTEMPT TO DISCHARGE THE ONUS ON IT UNDER SUBSECTION (3), FORMING UNION No. 1 HAD BEEN MOTIVATED TO DO SO IN ORDER TO AVOID A HEARING ON THE VERY SERIOUS ALLEGATIONS MADE BY THE APPLICANT.

HOWEVER, SINCE BOTH THE COMPANIES CONCERNED AND FORMING UNION No. 1 ARE EITHER UNABLE OR UNWILLING TO DISCHARGE THE ONUS ON THEM UNDER SUBSECTION (3) OF SECTION 45A, THE BOARD PURSUANT TO THE AUTHORITY VESTED IN IT UNDER SUBSECTION (1) OF SECTION 45A DECLARES THAT FORMING UNION No. 1 WAS NOT AT THE TIME THE AGREEMENT OF JULY 16, 1969 WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES OF THE COMPANIES CONCERNED IN THE BARGAINING UNIT SET OUT IN THE AGREEMENT.

IT FOLLOWS UNDER SUBSECTION (4) OF SECTION 45A THAT THE AGREEMENT OF JULY 16, 1969, BETWEEN FORMING UNION No. 1 AND THE COMPANIES WHO ARE PARTIES TO THESE PROCEEDINGS CEASES TO OPERATE FORTHWITH.

IN VIEW, HOWEVER, OF THE FACT THAT THE APPLICANT MADE ITS APPLICATIONS UNDER SECTION 45A AND HAS BEEN GRANTED THE RELIEF WHICH IT SOUGHT FROM THE BOARD, NAMELY, THAT FORMING UNION No. 1 WAS NOT, AT THE TIME THE AGREEMENT OF JULY 16, 1969 WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES OF THE COMPANIES CONCERNED IN THE BARGAINING UNIT SET OUT IN THE AGREEMENT, THE BOARD IS NOT IN A POSITION TO PROCEED WITH A HEARING OF THE ALLEGATIONS FILED BY THE APPLICANT.

31. THE CANADIAN CONCRETE FORMING UNION No. 1 ACCORDINGLY NO LONGER HOLDS THE BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF THE INTERVENER (TORONTO FORMING (1965) LTD.,) DILCON CONSTRUCTION LIMITED, N. DI LORENZO CONSTRUCTION CO. LTD., FALCON STRUCTURAL FORMING LIMITED, ACU FORMING LIMITED, REGIS CONCRETE FORMING LIMITED ETOBICOKE FORMING, RELI FORMS LIMITED, AND TRIPLE F FORMING LIMITED.

INDEXED ENDORSEMENTS - SUCCESSOR STATUS

16842-69-R: LOCAL 212 NATIONAL COUNCIL OF CANADIAN LABOUR (APPLICANT AND SPARTON OF CANADA LIMITED (RESPONDENT)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND H. F. IRWIN.

APPEARANCES AT THE HEARING: M. P. SINCLAIR AND LEON J. LABONTE FOR THE APPLICANT; W. G. PHELPS AND B. D. CREIGHTON FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 2ND, 1969.

1. THE NAME "SPARTON OF CANADA LTD." APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS THE NAME OF THE RESPONDENT IS AMENDED TO READ: "SPARTON OF CANADA LIMITED".

2. THIS IS AN APPLICATION UNDER SECTION 47 OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE INDEPENDENT UNION OF EMPLOYEES OF SPARTON OF CANADA LTD., WHICH WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN SPARTON OF CANADA LIMITED AND THE INDEPENDENT UNION OF EMPLOYEES OF SPARTON OF CANADA LTD., EFFECTIVE FROM JULY 1ST, 1967 TO JULY 1ST, 1969.

4. AT THE REQUEST OF THE RESPONDENT AND WITH THE CONSENT OF THE APPLICANT, THE BOARD AGREED TO HEAR EVIDENCE AND ARGUMENT AS TO WHAT MIGHT BE THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR ACQUIRED BY THE SUCCESSOR UNION AND IN PARTICULAR WHETHER A COLLECTIVE AGREEMENT HAD BEEN MADE BETWEEN THE RESPONDENT AND THE PREDECESSOR WHICH WOULD BE BINDING UPON THE SUCCESSOR.

5. THE COMPANY ARGUED THAT A COLLECTIVE AGREEMENT HAD BEEN EFFECTED BETWEEN IT AND THE PREDECESSOR UNION ON AUGUST 27, 1969. THE AGREEMENT WAS SAID TO CONSIST OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE PREDECESSOR UNION DATED JULY 1, 1967 (FILED AS EXHIBIT 1) AS AMENDED BY THE COMPANY'S "THIRD OFFER" (FILED AS EXHIBIT 2) AND A DOCUMENT DATED AUGUST 27, 1969 (FILED AS EXHIBIT 3). THE TEXT OF THE LATTER DOCUMENT IS AS FOLLOWS:

"THE THIRD OFFER BY SPARTON OF CANADA LIMITED TO THE INDEPENDENT UNION OF EMPLOYEES OF SPARTON OF CANADA LIMITED, AS AMENDED PER THE PHOTO COPIES ATTACHED, WAS RATIFIED BY A MEETING OF THE EMPLOYEES ON AUGUST 27, 1969. FOR ITEMS 1, 2, 4, 5, 6, 7, 18, 27 ON SEPT. 11/69."

6. THIS LATTER DOCUMENT IS SIGNED BY REPRESENTATIVES OF THE INDEPENDENT UNION AND OF THE COMPANY. THE COMPANY RELIES UPON THIS DOCUMENT AS INCORPORATING THE OTHER TWO AND URGES THAT THE THREE READ TOGETHER FORM THE COLLECTIVE AGREEMENT.

7. IT IS, OF COURSE, POSSIBLE TO FORMULATE A COLLECTIVE AGREEMENT CONSISTING OF SEVERAL DOCUMENTS, BY INCORPORATING THEM BY REFERENCE INTO THE INSTRUMENT ACTUALLY SIGNED BY THE PARTIES IN THE PRESENT CASE, HOWEVER, WE ARE OF THE OPINION THAT EXHIBIT 3 IS LIMITED BY ITS LANGUAGE TO AN ACCEPTANCE BY THE UNION OF ONLY THAT PART OF THE COMPANY'S PROPOSALS COVERED BY THE NUMBERED ITEMS. IT DOES NOT INCORPORATE THE OTHER MATTERS CONTAINED IN EXHIBITS 1 AND 2 AS THE COMPANY SOUGHT TO ESTABLISH AND THEY REMAIN TO BE SETTLED ONE WAY OR ANOTHER. THERE WAS, THEREFORE, NO COLLECTIVE AGREEMENT CONCLUDED BETWEEN THE COMPANY AND THE PREDECESSOR UNION. THERE, IS ON THE FACE OF THE DOCUMENT (EXHIBIT 3), WRITTEN ACCEPTANCE OF CERTAIN ITEMS OF THE COMPANY'S THIRD OFFER. THE PARTIES NO DOUBT CONTEMPLATED THAT THESE WOULD BECOME PART OF A COLLECTIVE AGREEMENT ALTHOUGH THE LANGUAGE DOES NOT GO EVEN THAT FAR.

8. WITH RESPECT TO THESE ITEMS, THE APPLICANT UNION CLEARLY STATED THAT IT FELT ITSELF BOUND BY AND UNDERTOOK TO ACCEPT AND ABIDE BY THE NUMBERED ITEMS SET OUT IN EXHIBIT 3 AS DUTIES AND RESPONSIBILITIES ACQUIRED BY IT BY VIRTUE OF THE SUCCESSION SO THAT THERE IS NO DISPUTE WITH RESPECT TO THOSE MATTERS WHICH THE BOARD IS CALLED UPON TO RESOLVE.

INDEXED ENDORSEMENT - PROSECUTION

16478-69-U: BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 415 (APPLICANT) V. GORMAN ECKERT AND COMPANY LIMITED (RESPONDENT)

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: L. A. MACLEAN, MORRIS ZIMMERMAN FOR THE APPLICANT; G. D. FINLAYSON, D. F. O. HERSEY, J. SASSARD FOR THE RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND D. B. ARCHER: DECEMBER 2, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR REFUSING AND CONTINUING TO REFUSE TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

2. DURING THE PROCEEDINGS A QUESTION AROSE AS TO WHETHER EVIDENCE AS TO WHAT OCCURRED DURING CONCILIATION COULD BE PLACED IN EVIDENCE, AND PARTICULARLY WHETHER A PROPOSED COLLECTIVE AGREEMENT SUBMITTED BY THE RESPONDENT TO THE APPLICANT DURING

CONCILIATION AND WHICH WAS ALSO SUBMITTED TO THE CONCILIATION OFFICER WAS ADMISSIBLE IN EVIDENCE. THE RESPONDENT CONTENDED THAT THE PROVISION OF SECTION 83 OF THE LABOUR RELATIONS ACT PREVENTED DISCLOSURE OF THE COLLECTIVE AGREEMENT WHILE THE APPLICANT CONTENDED THAT SECTION 83 WAS NOT INTENDED TO PROTECT CONDUCT WHICH WAS IN CONTRAVENTION OF THE BARGAINING IN GOOD FAITH REQUIREMENTS OF SECTION 12 OF THE LABOUR RELATIONS ACT.

3. FOR CONVENIENCE WE SET OUT THE RELEVANT PROVISIONS OF THE LABOUR RELATIONS ACT AS FOLLOWS:

12. "THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS FROM THE GIVING OF THE NOTICE OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT".

83(2) "NO INFORMATION OR MATERIAL FURNISHED TO OR RECEIVED BY A CONCILIATION OFFICER OR A MEDIATOR,

(A) UNDER THIS ACT; OR

(B) IN THE COURSE OF ANY ENDEAVOUR THAT A CONCILIATION OFFICER MAY MAKE UNDER THE DIRECTION OF THE MINISTER TO EFFECT A COLLECTIVE AGREEMENT AFTER THE MINISTER,

(1) HAS RELEASED THE REPORT OF A CONCILIATION BOARD OR A MEDIATOR, OR

(11) HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

SHALL BE DISCLOSED EXCEPT TO THE MINISTER, THE DEPUTY MINISTER OF LABOUR OR THE CHIEF CONCILIATION OFFICER OF THE DEPARTMENT OF LABOUR.

(2A) NO REPORT OF A CONCILIATION OFFICER SHALL BE DISCLOSED EXCEPT TO THE MINISTER, THE DEPUTY MINISTER OF LABOUR OR THE CHIEF CONCILIATION OFFICER OF THE DEPARTMENT OF LABOUR.

(2b) THE MINISTER, THE DEPUTY MINISTER OF LABOUR, THE CHIEF CONCILIATION OFFICER OF THE DEPARTMENT OF LABOUR OR ANY CONCILIATION OFFICER OR MEDIATOR APPOINTED UNDER THIS ACT OR ANY PERSON DESIGNATED BY THE MINISTER TO ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT IS NOT A COMPETENT OR COMPELLABLE WITNESS IN PROCEEDINGS BEFORE A COURT OR OTHER TRIBUNAL RESPECTING ANY INFORMATION, MATERIAL OR REPORT MENTIONED IN SUBSECTION 2 OR 2A, OR RESPECTING ANY INFORMATION OR MATERIAL FURNISHED TO OR RECEIVED BY HIM, OR ANY STATEMENT MADE TO OR BY HIM IN AN ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

(2c) THE CHAIRMAN OR ANY OTHER MEMBER OF A CONCILIATION BOARD IS NOT A COMPETENT OR COMPELLABLE WITNESS IN PROCEEDINGS BEFORE A COURT OR OTHER TRIBUNAL RESPECTING,

- (A) ANY INFORMATION OR MATERIAL FURNISHED TO OR RECEIVED BY HIM;
- (B) ANY EVIDENCE OR REPRESENTATION SUBMITTED TO HIM; OR
- (C) ANY STATEMENT MADE BY HIM,

IN THE COURSE OF HIS DUTIES UNDER THIS ACT."

4. THE ISSUE BEFORE THE BOARD, THEREFORE, IS WHETHER THE PROTECTION OF SECTION 83(2) IS TO BE EXTENDED TO PROTECT ALLEGED BAD FAITH BARGAINING. THE INTENT OF SECTION 12 OF THE LABOUR RELATIONS ACT IS NOT ONLY TO BRING THE PARTIES TO THE BARGAINING TABLE BUT TO INJECT INTO COLLECTIVE BARGAINING A FURTHER AND ADDED DIMENSION OR SPIRIT OF "BARGAINING IN GOOD FAITH" WHICH ENHANCES THE PROCESS OF COLLECTIVE BARGAINING. CONCILIATION IS NOT IN CONFLICT WITH BARGAINING IN GOOD FAITH BUT IS PART OF THE PROCESS OF COLLECTIVE BARGAINING AND IT SHOULD NOT BE USED AS AN INSTRUMENT TO DEFEAT THE VERY PURPOSE WHICH IT WAS INTENDED TO ASSIST. WE ARE THEREFORE OF THE OPINION THAT SECTION 83(2) IS TO BE INTERPRETED IN A MANNER THAT DOES NOT DEROGATE FROM THE CONCEPT OF BARGAINING IN GOOD FAITH.

5. SECTION 83(2) WAS ENACTED AS A RESULT OF THE SITUATION REPORTED IN BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 183 AND TRENTON MEMORIAL HOSPITAL 64 CLLC 1243, AND IT IS USEFUL TO EXAMINE THE TRENTON MEMORIAL HOSPITAL CASE AS A BACKGROUND FOR THE INTERPRETATION OF THAT SECTION. ACCORDINGLY IT IS NECESSARY TO DEAL EXTENSIVELY WITH THAT CASE.

6. ALTHOUGH MUCH OF THE DISCUSSION IN THAT CASE CONCERNED A CONCILIATION BOARD MANY OF THE SAME PRINCIPLES ARE APPLICABLE TO A CONCILIATION OFFICER. THE PARTIES HAD OBTAINED CONCILIATION SERVICES AND THE MATTER WAS CONSIDERED BY A CONCILIATION BOARD APPOINTED PURSUANT TO THE LABOUR RELATIONS ACT. THE CONCILIATION BOARD SUBMITTED A REPORT TO THE MINISTER OF LABOUR. DURING THE HEARING BEFORE THE LABOUR RELATIONS BOARD THE APPLICANT SUMMONED THE CHAIRMAN OF THE CONCILIATION BOARD AS A WITNESS TO GIVE EVIDENCE CONCERNING:

(A) THE INFORMATION WHICH WAS COMMUNICATED TO HIM IN PRIVATE CONVERSATIONS WITH THE RESPONDENT'S REPRESENTATIVES WHILE HE WAS ATTEMPTING TO EFFECT AN AGREEMENT BETWEEN THE PARTIES;

(B) WHAT HAD TAKEN PLACE AND BEEN SAID BY THE REPRESENTATIVES OF THE PARTIES IN THE PRESENCE OF EACH OTHER AND THE CHAIRMAN DURING THE TIME WHEN HE WAS CHAIRMAN OF THE CONCILIATION BOARD OR WAS ATTEMPTING TO EFFECT AGREEMENT BETWEEN THEM OF THE MATTERS REFERRED TO THE CONCILIATION BOARD;

(C) THE CONTENTS OF THE MAJORITY REPORT OF THE CONCILIATION BOARD;

(D) HIS VIEWS AS TO THE INTENTIONS OF THE HOSPITAL OFFICIALS AND AS TO WHETHER, IN HIS OPINION, THE RESPONDENT HAD BEEN BARGAINING IN GOOD FAITH AND MAKING EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT;

(E) THE DIFFICULTIES EXPERIENCED BY THE CHAIRMAN OR THE CONCILIATION BOARD IN ATTEMPTING TO EFFECT A SETTLEMENT OF THE MATTERS IN DISPUTE."

7. THE BOARD DISCUSSED THE PRACTICE OF CONCILIATORS AND AT PAGE 1245 SAID:

"IT IS OF INTEREST TO NOTE THE OBSERVATIONS MADE BY THIS BOARD ON THE PRACTICES OF CONCILIATORS IN THE CANADIAN STACKPOLE LTD. CASE, CCH CANADIAN LABOUR LAW REPORTER, 1955-59 TRANSFER BINDER, PARA 16-141 AT P. 12,263:

...ALTHOUGH THE EXTENT TO WHICH AN ADMINISTRATIVE BOARD MAY RELY ON OFFICIAL NOTICE HAS NOT BEEN CLEARLY DEFINED, IT WOULD BE PREPOSTEROUS TO SUPPOSE THAT THE MEMBERS OF THIS BOARD, CONSTITUTED AS IT IS, CAN FAIL TO TAKE COGNIZANCE OF THE FACT THAT MOST SUCCESSFUL CONCILIATORS HAVE ACHIEVED THEIR SUCCESS BY THE USE OF MANIFOLD TECHNIQUES AMONG WHICH ARE THOSE OF CONFERRING SEPARATELY WITH EACH OF THE PARTIES AND OF MEETING ONLY WITH KEY PRINCIPALS AND OF THE FURTHER FACT THAT CONCILIATORS IN THIS JURISDICTION HAVE FROM TIME TO TIME RELIED ON EACH OF THESE LAST TWO MENTIONED METHODS OF BREAKING DOWN THE BARRIERS TO THE SETTLEMENT OF A DISPUTE. IT IS COMMON KNOWLEDGE THAT SKILLED CONCILIATORS ACT AS A CHANNEL OF COMMUNICATION BETWEEN THE EMPLOYER, ON THE ONE HAND, AND A SENIOR OFFICIAL OF THE TRADE UNION, ON THE OTHER...

OBTAINING, IF HE IS TO BE A SUCCESSFUL CONCILIATOR, A CONCILIATION BOARD CHAIRMAN OR MEMBER MUST WIN AND RETAIN THE PERSONAL CONFIDENCE AND TRUST OF BOTH PARTIES TO THE DISPUTE. IT WILL USUALLY BE AN ESSENTIAL FIRST STEP IN ANY SETTLEMENT OF THEIR DIFFERENCES, THROUGH THE EFFORTS OF A CONCILIATOR, THAT THE PARTIES ARE WILLING, FRANKLY AND OPENLY, TO DISCUSS THEIR RESPECTIVE POSITIONS IN PRIVATE WITH THE CONCILIATOR WITHOUT FEAR THAT HE WILL LATER DIVULGE THE CONFIDENCES OF THEIR CONVERSATIONS TO THE OPPOSITE PARTY... HIS CAPACITY TO PERSUADE THE PARTIES TO MOVE FROM ENTRENCHED POSITIONS AND TO COMPROMISE THEIR DIFFERENCES WILL, IN A LARGE MEASURE, DEPEND UPON THEIR WILLINGNESS TO COMMUNICATE FREELY TO HIM EXPLANATIONS AND INFORMATION CONCERNING THE MATTERS WHICH INDUCE OR COMPEL THEM TO ADOPT THEIR RESPECTIVE POSITIONS AND WHAT COMPROMISES OR ALTERNATIVES THEY MIGHT OR MIGHT NOT BE PERSUADED TO ACCEPT IN LIEU THEREOF AND IN WHAT CIRCUMSTANCES.

WHILE THE PARTIES MIGHT ANTICIPATE THAT THE CONTENTS OF THESE COMMUNICATIONS MAY BE TAKEN INTO ACCOUNT BY THE BOARD OF CONCILIATION IN REACHING THE CONCLUSIONS AND OPINIONS WHICH IT MAY LATER EMBODY IN A REPORT TO THE MINISTER, IT CANNOT BE DOUBTED THAT MUCH OF THE EXPLANATIONS AND INFORMATION ITSELF CONTAINED IN THESE COMMUNICATIONS, AND FROM WHICH SUCH CONCLUSIONS OR OPINIONS MAY BE

DRAWN, WILL ORIGINATE ONLY IN THE CONFIDENCE THAT THE CONTENTS OF THE CONVERSATIONS THEMSELVES WILL NOT LATTER BE DISCLOSED TO THE OTHER PARTY. IT SEEMS TO US THAT THE ELEMENT OF CONFIDENTIALITY IS INDISPENSABLE TO THE INCEPTION AND MAINTENANCE OF ANY SATISFACTORY OR EFFECTIVE CONCILIATORY RELATIONSHIP BETWEEN THE CONCILIATOR AND THE PARTIES. IT IS NOT UNREASONABLE TO EXPECT, THEREFORE, SUBJECT TO ANY EXCEPTIONAL AND COMPELLING REASONS TO THE CONTRARY WHICH MAY EXIST IN THE PARTICULAR CASE, THAT THE MANDATORY AND INDISCRIMINATE DISCLOSURE OF THESE PRIVATE AND CONFIDENTIAL COMMUNICATIONS WOULD PROBABLY RESULT IN SERIOUSLY UNDERMINING AND DAMAGING THE RELATIONSHIP AND THE CONCILIATION PROCESS AS A WHOLE. THE RESULTANT DETRIMENT TO THE LABOUR-RELATIONS COMMUNITY AND TO THE PUBLIC AT LARGE WHICH WOULD BE OCCASIONED BY SUCH DISCLOSURE, WOULD LIKELY ECLIPSE AND OUTWEIGH ANY NEARSIGHTED BENEFIT TO BE GAINED TO THE PARTY SEEKING THEIR DISCLOSURE FOR THE IMMEDIATE PURPOSES OF A PARTICULAR CASE."

AFTER REVIEWING CERTAIN COMMON LAW RULES THE BOARD CONCLUDED AT PAGE 1247:

"IT IS OUR OPINION THAT, APART FROM ANY OTHER OBJECTIONS WHICH MAY BE TAKEN TO THEIR ADMISSIBILITY, ALL STATEMENTS MADE BY EITHER PARTY, IN PRIVATE CONVERSATIONS WITH MR. SMITH, WHILE HE WAS ATTEMPTING TO EFFECT AN AGREEMENT BETWEEN THEM, MUST, IN THE ABSENCE OF STRONG EVIDENCE TO THE CONTRARY, BE TAKEN PRIMA FACIE TO FALL WITHIN THE PROTECTION OF THE PRIVILEGE AND, THEREFORE, BE INADMISSIBLE. THE EXISTENCE OF THIS PRIVILEGE, WHICH PRIMA FACIE ATTACHES TO ALL OF THE CONTENTS OF THE CONVERSATIONS IN QUESTION, MUST NECESSARILY CAST A HEAVY ONUS ON THE APPLICANT, IF IT IS TO ESTABLISH THE COMPELLABILITY OF MR. SMITH TO TESTIFY TO THEM AND THEIR ADMISSIBILITY IN EVIDENCE AGAINST THE RESPONDENT, TO SATISFY US, BY MEANS ENTIRELY INDEPENDENT OF THE TESTIMONY PROTECTED BY SUCH PRIVILEGE, THAT STATEMENTS WERE MADE TO THE CHAIRMAN, TO WHICH THE PRIVILEGE IS NOT APPLICABLE AND WHICH CAN CLEARLY BE IDENTIFIED AND SEGREGA-

TED FROM, AND ARE NOT, OR CANNOT IN ANY WAY BE QUALIFIED BY ANY OTHER STATEMENTS WHICH ARE PROTECTED BY THE PRIVILEGE. PLAINLY, THE APPLICANT HAS NOT SATISFIED THIS ONUS."

IT ALSO SAID AT PAGE 1248:

"IT IS REASONABLE TO ANTICIPATE, IN VIEW OF OUR DECISION HEREIN, THAT QUESTIONS MAY NOW ARISE AS TO WHETHER OR NOT WHAT TOOK PLACE AND WAS SAID IN THE PRESENCE OF BOTH PARTIES BEFORE THE CONCILIATION BOARD OR THE CHAIRMAN ALSO COMES WITHIN THE PROTECTION OF THE SAME PRIVILEGE AS IS APPLICABLE TO THE PRIVATE CONVERSATIONS BETWEEN THE INDIVIDUAL PARTIES AND THE CHAIRMAN. DIFFERENT CONSIDERATIONS MAY WELL, OF COURSE, BE GIVEN TO WHAT TOOK PLACE AND WAS SAID BY THE PARTIES IN THE PRESENCE OF THE CONCILIATION BOARD WHEN IT WAS IN SESSION AS A TRIBUNAL TO RECEIVE THE REPRESENTATIONS AND EVIDENCE OF THE PARTIES FOR THE PURPOSE OF MAKING ITS REPORT TO THE MINISTER, THAN TO WHAT WAS SAID OR TOOK PLACE BEFORE THE CONCILIATION BOARD WHEN IT WAS DIRECTLY ATTEMPTING TO NEGOTIATE A SETTLEMENT. BY THE SAME TOKEN, DIFFERENT CONSIDERATIONS MAY ALSO APPLY TO WHAT TOOK PLACE AND WAS SAID BEFORE THE CHAIRMAN IN THE PRESENCE OF BOTH PARTIES WHEN HE WAS ATTEMPTING TO EFFECT A SETTLEMENT THAN TO WHAT WAS SAID OR TOOK PLACE BEFORE HIM IN THE PRESENCE OF BOTH PARTIES WHEN HE WAS NOT. AS ANY DETERMINATION OF THE PRINCIPLES PERTINENT TO THE ADMISSIBILITY OF EVIDENCE RELATING TO THESE OTHER QUESTIONS, AND AS THE PARTIES HAVE NOT HAD OCCASION TO PRESENT ARGUMENT TO US WITH RESPECT TO THEM, WE ARE CONSTRAINED TO DEFER OUR CONSIDERATION OF THE ADMISSIBILITY OF THE HOSPITAL BRIEF UNTIL THE RESUMPTION OF THE HEARING WHEN, THESE OTHER QUESTIONS ARE RAISED, THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT ARGUMENT WITH RESPECT TO THEM AS WELL."

8. WE ARE OF THE OPINION THAT FROM THE PASSAGES QUOTED THAT THE BOARD DISTINGUISHED BETWEEN PRIVATE CONVERSATIONS AND CONVERSATIONS OF A "NON-PRIVATE NATURE", AND CONCLUDED THAT PRIVATE CONVERSATIONS WERE NOT ADMISSIBLE IN THE CIRCUMSTANCES OF THAT CASE, WHILE DEFERRING ITS CONSIDERATION AS TO CONVERSATION OF A NON-PRIVATE NATURE.

9. HOWEVER, WHILE DEFERRING THOSE CONSIDERATIONS THE BOARD IMPLIED THAT THOSE CONVERSATIONS MIGHT BE ADMISSIBLE PROVIDED THAT THE CHAIRMAN OF THE CONCILIATION BOARD WAS NOT CALLED UPON TO GIVE TESTIMONY. THE BOARD SAID AT PAGE 1248:

"THESE IS NO DOUBT, IN OUR OPINION, THAT THE SAME GRAVE OBJECTIONS EXIST, AS IN THE CASE OF A JUDGE, AND PERHAPS WHEN HIS ROLE AND RESPONSIBILITY AS A CONCILIATOR IS CONSIDERED, **EVEN** MORE SO, TO THE CONDUCT OF THE CHAIRMAN OF A CONCILIATION BOARD "BEING MADE THE SUBJECT OF CROSS-EXAMINATION AND COMMENT" IN RELATION TO MATTERS TAKING PLACE BEFORE HIM WHEN THESE, IF OTHERWISE PROPERLY ADMISSIBLE, COULD EQUALLY AND PROPERLY BE PROVED BY OTHER PERSONS...

IT IS OUR CONCLUSION THAT IN THE ABSENCE OF ANYTHING TO INDICATE THAT HE ALONE CAN GIVE TESTIMONY, THE SAME OR A LIKE PRINCIPLE TO THAT WHICH HAS BEEN HELD TO EXCLUDE THE TESTIMONY OF A JUDGE, OUGHT ALSO, IN THE CIRCUMSTANCES OF THIS CASE, APPLY TO EXCLUDE THE TESTIMONY IN QUESTION OF MR. SMITH." (EMPHASIS ADDED)

WE ARE OF THE OPINION THAT THIS PASSAGE REFLECT THE INTENT OF THE BOARD TO PROTECT A PARTICULAR PERSON RATHER THAN PARTICULAR EVIDENCE AND IF THAT EVIDENCE COULD EQUALLY AND PROPERLY BE PROVED BY OTHER PERSONS "IT MAY HAVE VERY WELL BEEN ADMISSIBLE IN THOSE PROCEEDINGS".

10. WHEN WE CONSIDER SECTION 83(2) IN THE LIGHT OF THE TRENTON MEMORIAL HOSPITAL CASE WE ARE OF THE OPINION THAT SECTION 83(2) WAS ENACTED TO REMEDY THE MISCHIEF WHICH AROSE AS A RESULT OF THE FACTS OF THAT CASE. ACCORDINGLY SECTION 83(2A) IS TO PROTECT THE REPORT OF THE CONCILIATION OFFICER WHILE SECTION 83(2B) AND (2C) PROTECT PERSONS RATHER THAN EVIDENCE. WE ARE ALSO OF THE OPINION THAT THE PURPOSE OF SECTION 83(2) WAS INTENDED TO PROTECT THOSE CONVERSATIONS OF A PRIVATE NATURE BUT THAT CONVERSATIONS OR MATTERS OF A NON-PRIVATE NATURE ARE NOT PROTECTED BY SECTION 83(2).

11. WE THEREFOR FIND THAT THE PROPOSED COLLECTIVE AGREEMENT PRESENTED TO THE APPLICANT AND TO THE CONCILIATION OFFICER IS OF A NON-PRIVATE NATURE AND CAN PROPERLY BE PRESENTED IN EVIDENCE.

AS THIS ISSUE AROSE AS A RESULT OF A RULING DURING THE NORTH AMERICAN PLASTICS COMPANY LIMITED CASE (UNREPORTED) WE ARE OF THE OPINION THAT WHERE THE DECISION OF THIS CASE IS IN CONFLICT WITH THAT RULING, THAT THE DECISION OF THIS CASE SHALL PREVAIL.

12. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: DECEMBER 2, 1969.

I DISSENT.

IN THE FIRST PLACE I WISH TO RECORD THAT WHAT WAS TENDERED BY THE COMPANY AT THE CONCILIATION OFFICER'S MEETING WAS NOT A COLLECTIVE AGREEMENT, BUT RATHER PROPOSALS DRAFTED IN THE FORM OF A COLLECTIVE AGREEMENT.

IN MY OPINION THE PRESENTATION OF THE PROPOSALS FALL SQUARELY WITHIN THE PRIVILEGE OF SECTION 83(2) OF THE LABOUR RELATIONS ACT.

THE DANGERS OF THIS DECISION BY THE MAJORITY OF THE BOARD ARE READILY APPARENT.

BOTH PARTIES AT MEETINGS HELD BY A CONCILIATION OFFICER MUST NOW DECIDE WHETHER IT WILL SUPPLY MATERIAL AND INFORMATION TO A CONCILIATION OFFICER FREELY AND VOLUNTARILY AND WITHOUT FEAR OF ANY REPERCUSSIONS OR WHETHER IT WILL WITHHOLD SUCH MATERIAL AND INFORMATION FROM MEETINGS HELD WITH THE CONCILIATION OFFICER IN FEAR THAT THE CONFIDENTIALITY OF SUCH MATERIAL WILL BE WITHDRAWN.

IN MY OPINION, TO RESOLVE THE MATTER (AS DOES THE MAJORITY) ON WHETHER THE MATERIAL AND INFORMATION PRESENTED WAS OF A "PRIVATE" OR A "NON-PRIVATE" NATURE, WHEN SUCH MATERIAL AND INFORMATION WAS GIVEN UNDER THE AUSPICES OF THE MINISTER OF LABOUR AND THE CONCILIATION OFFICER, IS TO MAKE ACADEMIC THAT WHICH WAS INTENDED TO BE PRACTICAL. IN MY OPINION, THIS DECISION CANNOT HELP BUT INHIBIT THE RESPECTIVE PARTIES AT SUCH PROCEEDINGS.

I MAY SAY ALSO THAT I FIND THIS DECISION TO BE IN DIRECT CONTRAVENTION OF THE ORAL DECISION OF THE VICE-CHAIRMAN AND OTHER MEMBERS OF THE BOARD IN THE NORTH AMERICAN PLASTICS COMPANY LIMITED CASE, SUPRA.

THE RESPONDENT MADE A SUBMISSION TO THE BOARD AS FOLLOWS:

"AT THE HEARING OF THE ABOVE NOTED MATTER BEFORE THE ONTARIO LABOUR RELATIONS BOARD ON AUGUST 18, 1969, THE APPLICANT ATTEMPTED TO ADDUCE EVIDENCE AND PRESENT ARGUMENT CONCERNING WRITTEN MATERIAL AND ORAL REPRESENTATIONS MADE BEFORE A CONCILIATION OFFICER, ONE G. L. GREENAWAY ON JULY 11TH, 1969, AND JULY 21ST 1969. THE RESPONDENT OBJECTED ON THE GROUND THAT SUCH EVIDENCE WAS NOT ADMISSIBLE BY VIRTUE OF THE PROVISIONS OF SECTION 83 (2) OF THE LABOUR RELATIONS ACT. THE NORTH AMERICAN PLASTICS CASE WAS CITED AS ONE IN WHICH THE BOARD HAD RULED THE COMMUNICATIONS IN THE PRESENCE OF BOTH PARTIES AND A CONCILIATION OFFICER WERE AS PRIVILEGED AS COMMUNICATIONS BETWEEN ONLY ONE PARTY AND A CONCILIATION OFFICER. THE BOARD STATED THAT NOTWITHSTANDING THE RULING IN THAT CASE IT PREFERRED TO HAVE WRITTEN ARGUMENT ON THIS POINT, AS WELL AS TO WHETHER ONE PARTY COULD BE SAID TO HAVE WAIVED THE PRIVILEGE UNDER SECTION 83 (2), BY FILING DOCUMENTS WITH THE BOARD. THE APPLICANT HAS MADE ITS WRITTEN SUBMISSION AND THE RESPONDENT REPLIES HERewith.

IN THE BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 183 AND TRENTON MEMORIAL HOSPITAL CASE, 64 C.L.L.C. 16302, THE BOARD EXAMINED THE CONCILIATION PROCESS IN SOME DETAIL AND CONSIDERED THE ADMISSIBILITY OF INFORMATION GIVEN TO A CONCILIATION BOARD. ALTHOUGH THAT CASE PRE-DATES SECTION 83 (2), IT CONSIDERED THE PROBLEMS WHICH THAT SECTION WAS DESIGNED TO REMEDY.

THE CHAIRMAN OF THE BOARD IN THAT CASE, MR. L. A. MACLEAN QUOTES FROM A DECISION OF THE BOARD IN THE CANADIAN STACKPOLE CASE, 59 C.L.L.C. 16142 AS FOLLOWS:

"...ALTHOUGH THE EXTENT TO WHICH AN ADMINISTRATIVE BOARD MAY RELY ON AN OFFICIAL NOTICE HAS NOT BEEN CLEARLY DEFINED, IT WOULD BE PREPOSTEROUS TO SUPPOSE THAT THE MEMBERS OF THIS BOARD, CONSTITUTED AS IT IS, CAN FAIL TO TAKE COGNIZANCE OF THE FACT THAT MOST SUCCESSFUL CONCILIATORS HAVE ACHIEVED THEIR SUCCESS BY USE OF MANIFOLD TECHNIQUES AMONG WHICH ARE THOSE OF CONFERRING SEPARATELY WITH EACH OF THE PARTIES, AND OF MEETING WITH ONLY KEY PRINCIPALS AND OF THE FURTHER FACT THAT CONCILIATORS IN THIS JURISDICTION HAVE FROM TIME TO TIME RELIED ON EACH OF THESE LAST TWO MENTIONED METHODS OF BREAKING DOWN THE BARRIERS

TO THE SETTLEMENT OF A DISPUTE. IT IS COMMON KNOWLEDGE THAT SKILLED CONCILIATORS ACT AS A CHANNEL OF COMMUNICATION BETWEEN THE EMPLOYER, ON THE ONE HAND, AND A SENIOR OFFICIAL OF THE TRADE UNION, ON THE OTHER ..."

MR. MACLEAN GOES ON TO STATE:

"...IT SEEMS TO US THAT THE ELEMENT OF CONFIDENTIALITY IS INDISPENSABLE TO THE INCEPTION AND MAINTENANCE OF ANY SATISFACTORY OR EFFECTIVE CONCILIATORY RELATIONSHIP BETWEEN THE CONCILIATOR AND THE PARTIES. IT IS NOT UNREASONABLE TO EXPECT, THEREFORE, SUBJECT TO ANY EXCEPTIONAL AND THEREFORE COMPELLING REASONS TO THE CONTRARY WHICH MAY EXIST IN THE PARTICULAR CASE, THAT THE MANDATORY AND INDISCRIMINATE DISCLOSURE OF THESE PRIVATE AND CONFIDENTIAL COMMUNICATIONS WOULD PROBABLY RESULT IN SERIOUSLY UNDERMINING AND DAMAGING THE RELATIONSHIP AND THE CONCILIATION PROCESS AS A WHOLE. THE RESULTANT DETRIMENT TO THE LABOUR - RELATIONS COMMUNITY AND THE PUBLIC AT LARGE WHICH WOULD BE OCCASIONED BY SUCH DISCLOSURE, WOULD LIKELY ECLIPSE AND OUTWEIGH ANY NEARSIGHTED BENEFIT TO BE GAINED TO THE PARTY SEEKING THEIR DISCLOSURE FOR THE IMMEDIATE PURPOSES OF A PARTICULAR CASE..."

IN THE SUBMISSION OF THE RESPONDENT IT IS THE MAINTENANCE OF CONFIDENTIALITY AND A SATISFACTORY CONCILIATORY RELATIONSHIP THAT PROMPTED THE LEGISLATURE TO PASS SECTION 83 (2). IT WOULD BE UNSEEMLY IN OUR SUBMISSION TO REQUIRE A CONCILIATION OFFICER TO EXPLAIN THE CONDUCT OF THE PARTIES AND THE INFORMATION AND MATERIAL UNDER DURING CONCILIATION MEETINGS.

THE APPLICANT IN ITS SUBMISSION HAS SOUGHT TO QUALIFY THE TYPES OF INFORMATION AND THE CIRCUMSTANCES UNDER WHICH SUCH INFORMATION IS GIVEN TO A CONCILIATION OFFICER. THE ARGUMENT IS APPARENTLY THAT ONLY INFORMATION WHICH THE PARTIES THROUGH THEIR CONDUCT WANT KEPT SECRET IS TO BE PRIVILEGED. SECTION 83(2) HOWEVER DOES NOT CONTEMPLATE ANY SUCH DISTINCTION. NO INFORMATION OR MATERIAL FURNISHED TO A CONCILIATION OFFICER IS TO BE DISCLOSED. THERE IS NO QUALIFICATION MADE TO THIS PROHIBITION. THE SECTION STATES:

"NO INFORMATION OR MATERIAL FURNISHED TO OR RECEIVED BY A CONCILIATION OFFICER OR A MEDIATOR,..... SHALL BE DISCLOSED..."

THE PROBLEMS INHERENT IN ANY ATTEMPT TO PICK AND CHOOSE THOSE PARTS OF THE CONCILIATION PROCESS WHICH MIGHT NOT BE CONSIDERED PRIVILEGED WAS A MATTER WHICH WAS ALSO TREATED IN THE TRENTON MEMORIAL HOSPITAL CASE, SUPRA. THE CHAIRMAN THEREIN STATED:

"...THE BARE FACT THAT A PARTY MAKES HOSTILE OR EMOTIONAL STATEMENTS IN THE HEAT OF BARGAINING OR TAKES AN ADAMANT OR INTRANSIGENT POSITION, MAY NOT OF ITSELF, OR WHEN CONSIDERED IN CONTEXT WITH OTHER STATEMENTS AND ACTIONS OF THE PARTY, WARRANT THE CONCLUSION THAT THE PARTY WAS NOT BARGAINING IN GOOD FAITH, OR MAKING EVERY REASONABLE EFFORT TO EFFECT A COLLECTIVE AGREEMENT. NO SUGGESTION WHATSOEVER WAS MADE BY THE APPLICANT'S COUNSEL THAT THE SCOPE OF RELEVANT EXAMINATION AND CROSS-EXAMINATION COULD OR SHOULD BE RESTRICTED OR CIRCUMSCRIBED BY ANY DISCERNIBLE OR PRACTICABLE BOUNDARY LINES SHORT OF A COMPLETE INQUIRY INTO EVERYTHING THAT WAS IN THE PRIVATE CONVERSATIONS. IT NEED HARDLY BE SAID THAT THE CONSEQUENCES OF AN INQUIRY OF THIS NATURE WOULD EFFECTIVELY REMOVE AND DESTROY ANY PRIVILEGE ATTACHING TO THE COMMUNICATIONS."

ALTHOUGH THE BOARD IN THAT CASE WAS DEALING WITH THE QUESTION OF PRIVILEGE OVER STATEMENTS MADE IN THE PRESENCE OF THE CONCILIATION OFFICER AND ONLY ONE PARTY, IT NONETHELESS APPRECIATED THE PROBLEM INVOLVED IN ATTEMPTING TO COMPARTMENTALIZE THE CONCILIATION PROCESS AND RESTRICT THE PRIVILEGE TO ONLY PARTS THEREOF. IN THE SUBMISSION OF THE RESPONDENT THE CONCLUSION IS INESCAPABLE THAT IF AN EXAMINATION AND CROSS-EXAMINATION OF ANY INFORMATION OR MATERIAL SUBMITTED DURING CONCILIATION IS TO BE PERMITTED IN PART, THEN IT WILL BE NECESSARY TO EXAMINE THE PROCEEDING IN WHOLE. IF THE PROCEEDING IS TO BE EXAMINED IN WHOLE THIS WILL INEVITABLY REQUIRE THE ATTENDANCE OF THE CONCILIATION OFFICER. IN OUR SUBMISSION THE LEGISLATURE INTENDED TO PROTECT THE CONCILIATION PROCESS FROM JUST SUCH AN EXAMINATION, AND INTENDED TO REQUIRE A PARTY-SEEKING CONSENT TO PROSECUTE FOR FAILURE TO BARGAIN TO ADDUCE EVIDENCE FROM CONDUCT OUTSIDE OF THE CONCILIATION PROCESS.

THE APPLICANT IN ITS SUBMISSION HAS ATTEMPTED TO ARGUE THAT THE STATUTORY PRIVILEGE CREATED BY SECTION 83 (2) IS NOT AN ABSOLUTE ONE, AND THAT BY ANALOGY TO CASES DEALING WITH "WITHOUT PREJUDICE" DOCUMENTS, THE PRIVILEGE MAY BE LOST THROUGH FRAUDULENT OR THREATENING STATEMENTS MADE THEREIN.

THE APPLICANT FURTHER SUGGESTS THAT THE PRIVILEGE EXTENDS ONLY TO MATERIAL OR INFORMATION RELATING DIRECTLY TO THE DISPUTE TO BE SETTLED AND THAT OTHER MATERIAL ARISING DURING THE CONCILIATION PROCESS MAY BY ANALOGY BE ADDUCED IN EVIDENCE.

IN THE SUBMISSION OF THE RESPONDENT BOTH THESE ARGUMENTS FAIL FOR THE SAME REASON. THE APPLICANT STATES THAT IT IS A SPECIFIC CLAUSE IN AN ALLEGED PROPOSAL MADE BY THE RESPONDENT TO THE APPLICANT IN THE PRESENCE OF THE CONCILIATION OFFICER WHICH IN ITSELF CONSTITUTES A FAILURE TO BARGAIN IN GOOD FAITH. THIS DOCUMENT CLEARLY RELATES DIRECTLY TO THE SETTLEMENT OF THE COLLECTIVE BARGAINING DISPUTE, AND TO THE FUNCTION OF THE CONCILIATION OFFICER, INASMUCH AS IT EMBODIES AN ATTEMPT TO SETTLE THAT DISPUTE. IT IS IMPOSSIBLE THEREFORE TO CONSIDER THAT DOCUMENT AS EXTRANEOUS. FURTHERMORE, AS IT IS THE PROPOSAL ITSELF WHICH IS THE ACT COMPLAINED OF, THEN IT IS IMPOSSIBLE TO ANALOGIZE TO CASES DEALING WITH FRAUD OR THREATS. THE APPLICANT IN THE FORM OF THE PARTICULARS TO ITS APPLICATIONS HAS REMOVED THE POSSIBILITY OF THIS ARGUMENT BEING MADE. ONLY INSOFAR AS THE PROPOSAL ITSELF CAN BE SUGGESTED TO BE A THREAT CAN THIS ARGUMENT HAVE ANY MERIT.

IF THIS BOARD WERE TO CONSIDER THAT SECTION 83(2) DOES NOT CONSTITUTE AN ABSOLUTE PRIVILEGE (WHICH IN THE RESPONDENT'S SUBMISSION IT DOES) THEN THE APPLICANT MUST OVERCOME A FURTHER PROBLEM WHICH WAS ALSO CONSIDERED IN THE TRENTON MEMORIAL HOSPITAL CASE. THE APPLICANT MUST SATISFY THE BOARD ON GROUNDS, COMPLETE AND SEPARATE FROM THE DOCUMENT IN QUESTION, AND NOT DEPEND ON ANY INFORMATION OR STATEMENTS THAT ARE PRIVILEGED UNDER SECTION 83(2) THAT THERE WAS SOME FRAUDULENT OR THREATENING OR OTHER CONDUCT WHICH SHOULD CAUSE THE BOARD TO DISCOUNT THE PRIVILEGE. IN OUR SUBMISSION THE APPLICANT HAS NOT TO DATE DONE SO. INDEED THE APPLICANT HAS PLEADED NO SUCH CONDUCT IN ITS PARTICULARS, AND SHOULD THEREFORE, UNDER THE RULES OF THE BOARD, BE PRECLUDED FROM LEADING SUCH EVIDENCE.

THE BOARD HAS EXPRESSED CONCERN, AND THE APPLICANT HAS ARGUED THAT THE FILING OF CERTAIN DOCUMENTS USED DURING THE CONCILIATION PROCESS, BY BOTH PARTIES, CONSTITUTES A WAIVER OF ANY PRIVILEGE CONCERNING THEM.

IN THE SUBMISSION OF THE RESPONDENT THE REPLY AS FILED CONSTITUTES THE ANTICIPATED POSITION WHICH IT WOULD TAKE AT THE HEARING. ANY DOCUMENTS FILED BY THE APPLICANT, OR BY THE RESPONDENT PRIOR TO THE HEARING, DO NOT CONSTITUTE EVIDENCE, AND EITHER PARTY MAY ELECT AT THE HEARING TO IGNORE THIS MATERIAL. TO DO OTHERWISE WOULD BE TO COMPEL THE PARTIES TO INTRODUCE EVIDENCE MENTIONED IN THE REPLY OR COMPLAINT, AND THEREBY DEPRIVE THE PARTIES OF THE FREEDOM TO DEVELOP THEIR CASE AS THEY WISH WITHIN THE RULES OF THE BOARD. THE QUESTION OF STATUTORY PRIVILEGE IS NOT A MATTER WHICH NEED BE PLEADED OR MENTIONED IN THE REPLY OF THE RESPONDENT AND THEREFORE IN OUR SUBMISSION IT MAY BE RAISED AT ANY TIME. IN THE SUBMISSION OF THE RESPONDENT THE BOARD SHOULD NOT FIND THAT THERE HAS BEEN ANY WAIVER IN THIS CASE INASMUCH AS IT SHOULD ONLY CONCERN ITSELF

WITH THOSE DOCUMENT WHICH ARE PLACED BEFORE IT AT THE HEARING AFTER BEING PROPERLY INTRODUCED INTO EVIDENCE. THIS HAS NOT BEEN DONE WITH THE DOCUMENTS IN QUESTION.

IN CONCLUSION THE RESPONDENT SUBMITS THAT THE BOARD SHOULD FOLLOW THE PRACTICE ADOPTED IN THE WELLPORT INVESTMENTS LIMITED CASE, APRIL, 1968, O.L.R.B. MONTHLY REPORT AND THE NORTH AMERICAN PLASTICS CASE AND REFUSE TO HEAR EVIDENCE OF ANY INFORMATION OR MATERIAL FURNISHED TO OR RECEIVED BY A CONCILIATION OFFICER, WHETHER IN THE COMPANY OF ONE OR BOTH PARTIES TO A CONCILIATION HEARING."

I WOULD ENDORSE AND ADOPT THE SUBMISSIONS OF THE RESPONDENT AND FIND THAT THE PROPOSALS PRESENTED AT THE MEETING HELD UNDER THE AUSPICES OF THE CONCILIATION OFFICER WAS PRIVILEGED AND NOT RECEIVABLE BY THIS BOARD IN EVIDENCE.

INDEXED ENDORSEMENTS - SECTION 65

16800-69-U: CALVIN NIMMO (COMPLAINANT) V. STANDARD BRANDS LIMITED
(RESPONDENT)

16801-69-U: DANIEL MACNEIL (COMPLAINANT) V. STANDARD BRANDS LIMITED
(RESPONDENT)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: JEAN JACQUES BLAIS AND VINCE McMANUS FOR THE COMPLAINANT, W. GIBSON GRAY, Q.C., FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN
DECEMBER 22ND, 1969.

1. THE COMPLAINT WITH RESPECT TO DANIEL MACNEIL IS WITHDRAWN AT THE REQUEST OF THE COMPLAINANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD.

2. THE COMPLAINANT ADDUCED EVIDENCE ON BEHALF OF CALVIN NIMMO WHO WAS LAID OFF BY THE RESPONDENT ON OCTOBER 1ST, 1969. THE CIRCUMSTANCES SURROUNDING THE LAYOFF OF MR. NIMMO WHICH MIGHT LEAD TO SPECULATION THAT HE WAS LAID OFF BECAUSE HE SUPPORTED THE UNION ARE AS FOLLOWS. THE UNION APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT ON AUGUST 15TH, 1969. THE TERMINAL DATE FIXED FOR THAT APPLICATION WAS AUGUST 26TH, 1969. A HEARING WAS HELD ON SEPTEMBER 2ND, 1969 AND ON SEPTEMBER 3RD, 1969 THE BOARD APPOINTED AN EXAMINER TO

INQUIRE INTO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE UNION SUBSEQUENTLY WITHDREW ITS CHALLENGE TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND THE BOARD IN ITS DECISION DATED SEPTEMBER 29TH, 1969 DIRECTED THAT A REPRESENTATIVE VOTE BE TAKEN. THE BOARD'S DECISION OF SEPTEMBER 29TH WAS FORWARDED TO THE PARTIES BY REGISTERED MAIL ON SEPTEMBER 30TH AND WAS RECEIVED BY THE PARTIES ON OCTOBER 1ST AT APPROXIMATELY THE MIDDLE OF THE MORNING.

3. MR. NIMMO WAS GIVEN A LETTER INFORMING HIM OF HIS LAYOFF AT 7:00 A.M. ON OCTOBER 1ST. THE LETTER WAS TYPED ON SEPTEMBER 30TH AND READS AS FOLLOWS:

MR. ARNOLD HENNESSEY OUR CHIEF OPERATING ENGINEER HAS RESIGNED HIS POSITION AND WE MUST RE-ORGANIZE OUR STAFFING ARRANGEMENTS IN THE BOILER HOUSE AS A RESULT OF THIS.

YOU ARE AWARE THAT OUR NORMAL REQUIREMENT TO RUN THE BOILER HOUSE IS TWO THIRD CLASS OPERATING ENGINEERS AND ONE SECOND CLASS CHIEF OPERATING ENGINEER. YOU ARE AWARE THAT WE PRESENTLY HAVE THREE THIRD CLASS OPERATING ENGINEERS AND THUS HAVE ONE MORE THAN OUR REQUIREMENT.

IN VIEW OF THE FACT THAT YOU ARE THE LEAST SENIOR OF THE THIRD CLASS OPERATING ENGINEERS IT IS UNFORTUNATELY NECESSARY TO DISPENSE WITH YOUR SERVICE AT THE END OF YOUR SHIFT ON OCTOBER 1ST, 1969.

WE ARE VERY SORRY ABOUT THIS AND WILL BE PLEASED TO GIVE YOU A LETTER OF RECOMMENDATION SHOULD YOU REQUIRE ONE. WE WOULD ALSO BE PLEASED TO CONSIDER YOU FOR RE-EMPLOYMENT AS A THIRD CLASS STATIONARY ENGINEER IF AN OPENING OCCURS AT A FUTURE DATE.

WE ARE SATISFIED THAT THE RESPONDENT INFORMED MR. NIMMO OF HIS LAYOFF PRIOR TO BEING ADVISED THAT A REPRESENTATION VOTE WOULD BE TAKEN.

4. MR. NIMMO TESTIFIED THAT AT THE TIME HE WAS HIRED HE WAS INFORMED BY MR. TELFER, THE RESPONDENT'S PLANT SUPERINTENDENT, THAT THE RESPONDENT WOULD TAKE ANY STEPS NECESSARY TO PREVENT A UNION FROM COMING INTO THE RESPONDENT'S PLANT. MR. TELFER IN HIS TESTIMONY DENIED MAKING THE STATEMENT ATTRIBUTED TO HIM. IN ADDITION, THE OTHER UNION WITNESSES WHO TESTIFIED DID NOT SUPPORT MR. NIMMO IN THIS REGARD. IT WAS THE TESTIMONY OF THE OTHER UNION WITNESSES THAT THERE HAD BEEN NO TIME TO TRY TO INFLUENCE THEM WITH RESPECT TO THEIR SUPPORT OF THE UNION

ALSO, ONE OF THE STATIONARY ENGINEERS WHO WAS HIRED IN THE MONTH OF AUGUST 1969 HAD WORKED FOR INTERNATIONAL NICKEL COMPANY UNTIL A STRIKE OCCURRED. HIS ASSOCIATION WITH THE STRIKE-BOUND INCO PLANT WAS KNOWN TO THE RESPONDENT AT THE TIME HE WAS HIRED.

5. HAVING ASSESSED THE CREDIBILITY OF THE WITNESSES, WE FIND THAT WE CANNOT ACCEPT MR. NIMMO'S TESTIMONY CONCERNING THE STATEMENTS ALLEGED TO HAVE BEEN MADE TO HIM BY MR. TELFER AT THE TIME HE WAS HIRED. THERE WAS NOTHING IN MR. NIMMO'S TESTIMONY WHICH WOULD INDICATE THAT MR. TELFER WAS PROMPTED TO MAKE THE STATEMENT ATTRIBUTED TO HIM, APART FROM THE FACT THAT SUCH AN IRRESPONSIBLE STATEMENT WOULD BE INCONSISTENT WITH OUR ASSESSMENT OF MR. TELFER.

6. THE COMPLAINANT ALSO BASED ITS CLAIM ON THE FACT THAT MR. MOONEY, A THIRD CLASS STATIONARY ENGINEER WHO HAD BEEN EMPLOYED BY THE RESPONDENT FOR THIRTY-NINE YEARS, WAS DUE FOR RETIREMENT COMMENCING ON THE 1ST OF SEPTEMBER 1969. PRIOR TO SEPTEMBER 1ST, MR. MOONEY HAD TAKEN HIS ANNUAL VACATION AND WHILE ON VACATION HAD ATTEMPTED, IN THE COMPANY OF ANOTHER UNION WITNESS, TO FIND A JOB AS A THIRD CLASS STATIONARY ENGINEER TO REPLACE THE JOB HE WAS RETIRING FROM. DURING THIS PERIOD, WHILE AT THE PLANT TO COLLECT A PAY CHEQUE, HE ASKED MR. TELFER WHETHER OR NOT THE COMPANY COULD CONTINUE TO USE HIS SERVICES. MR. TELFER AGREED TO LOOK INTO THE MATTER AND ON AUGUST 29TH ADVISED MR. MOONEY THAT HIS EMPLOYMENT WOULD BE CONTINUED WITH THE RESPONDENT. DURING THE THIRTY-NINE YEARS MR. MOONEY HAD WORKED FOR THE RESPONDENT HE PROVED TO BE A GOOD AND EFFICIENT EMPLOYEE. WHILE MR. MOONEY WAS SIXTY-FIVE YEARS OF AGE, HE SEEMED TO BE IN ROBUST HEALTH AND CAPABLE OF CONTINUING HIS EMPLOYMENT AS A THIRD CLASS STATIONARY ENGINEER. ALTHOUGH THE RESPONDENT HAD NO COMPLAINT ABOUT MR. NIMMO'S SERVICES AS A THIRD CLASS STATIONARY ENGINEER, THE RESPONDENT ELECTED TO RETAIN MR. MOONEY IN PREFERENCE TO MR. NIMMO BECAUSE OF HIS LONG EXPERIENCE IN THE PLANT. MR. NIMMO HAD FIVE MONTHS' SERVICE WITH THE RESPONDENT COMPARED TO THE THIRTY-NINE YEARS OF SERVICE ENJOYED BY MR. MOONEY. THE DECISION TO PERMIT MR. MOONEY TO CONTINUE HIS EMPLOYMENT WAS MADE PRIOR TO THE FIRST HEARING IN THE CERTIFICATION APPLICATION AND THIS DECISION COULD THEREFORE NOT HAVE BEEN AFFECTED BY ANY INFORMATION GAINED AT THAT HEARING. THE FACT THAT THE RESPONDENT DECIDED TO CONTINUE TO EMPLOY MR. MOONEY, WHO WAS AT THE RETIREMENT AGE, IN PREFERENCE TO MR. NIMMO, DOES NOT ESTABLISH THAT MR. NIMMO WAS LAID OFF CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. WHEN MR. NIMMO WAS LAID OFF THERE REMAINED IN THE EMPLOY OF THE COMPANY ONE 2ND CLASS STATIONARY ENGINEER, UNDER WHOSE CERTIFICATE THE BOILER ROOM FUNCTIONED, AND TWO 3RD CLASS STATIONARY ENGINEERS BOTH OF WHOM HAD CONSIDERABLE MORE SENIORITY THAN MR. NIMMO. THE THREE STATIONARY ENGINEERS LEFT IN THE EMPLOY OF THE RESPONDENT FORMED THE NORMAL COMPLEMENT IN THE BOILER ROOM OF THE RESPONDENT SINCE ALL THREE STOOD A SHIFT AND WERE EMPLOYED ON A FIVE-DAY WEEK.

7. HAVING REGARD TO ALL THE EVIDENCE, WE THEREFORE FIND THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT MR. NIMMO WAS DISCHARGED CONTRARY TO ANY OF THE PROVISIONS OF THE LABOUR RELATIONS ACT AND THIS COMPLAINT MUST ACCORDINGLY FAIL.

8. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: DECEMBER 22, 1969.

I DISSENT FROM THE MAJORITY DECISION IN THIS MATTER. I WOULD FIND ON ALL THE EVIDENCE THAT THE PATTERN OF THE RESPONDENT'S CONDUCT LEADS TO THE INESCAPABLE CONCLUSION THAT MR. NIMMO WAS SELECTED FOR LAYOFF BECAUSE OF HIS MEMBERSHIP IN THE UNION AND I WOULD HAVE ACCORDINGLY REINSTATED MR. NIMMO IN HIS EMPLOYMENT WITH COMPENSATION FOR LOSS OF EARNINGS.

16850-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC,
(COMPLAINANT) V. ONTARIO BAKERY (RESPONDENT)

16851-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC,
(COMPLAINANT) V. ONTARIO BAKERY (RESPONDENT)

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

DECISION OF THE BOARD: DECEMBER 10, 1969.

#16851-69-U

1. HAVING REGARD TO THE SUBMISSIONS OF THE APPLICANT AND CONSIDERING THAT NO EVIDENCE WAS ADDUCED WITH RESPECT TO KENNETH BAKER AND VICTOR GREEN, THIS APPLICATION IS DISMISSED.

#16850-69-U

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT ALLEGING THAT THE AGGRIEVED PERSONS BEVERLEY FOSTER AND BEN VENUTO BONHOMO, WERE DEALT WITH CONTRARY TO SECTIONS 48 AND 50, AND REQUESTING THAT THE BOARD REINSTATE THE AGGRIEVED PERSONS TO THEIR FORMER EMPLOYMENT WITH FULL COMPENSATION FOR LOSS OF EARNINGS SUFFERED.

2. HAVING REGARD TO THE EVIDENCE AND SUBMISSIONS OF THE PARTIES, AND PARTICULARLY THE EVIDENCE WITH RESPECT TO DISCUSSIONS BETWEEN THE EMPLOYER AND THE EMPLOYEES AT THE TIME OF THE APPLICATION FOR CERTIFICATION, AND THAT THERE WAS NO EVIDENCE WITH RESPECT TO ANY INCIDENT WHICH PRECIPITATED THE DISCHARGE, WE ARE OF THE OPINION THAT THE

RESPONDENT HAS VIOLATED THE PROVISIONS OF SECTIONS 48 AND 50 OF THE LABOUR RELATIONS ACT.

3. THE AGGRIEVED SHOULD BE REINSTATED TO THEIR EMPLOYMENT WITH THE FOLLOWING COMPENSATION:

(A) BEVERLEY FOSTER (@ \$110.00 PER WEEK TOTAL
FROM OCTOBER 7TH COMPEN-
UNTIL DECEMBER 4TH, SATION: \$935.00
1969)

(B) BENVENUTO BONHOMO(@ \$110.00 PER WEEK TOTAL
FROM OCTOBER 7TH COMPEN-
UNTIL DECEMBER 4TH, SATION. \$935.00
1969)

4. THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH FOR THE PURPOSE OF AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND THE EMPLOYMENT BENEFITS SUSTAINED BY THE COMPLAINANTS BETWEEN THE DATE OF THE HEARING ON DECEMBER 4TH, 1969 AND THE DATE OF REINSTATEMENT BY THE RESPONDENT. IN DEFAULT OF AGREEMENT BETWEEN THE PARTIES WITHIN SEVEN DAYS FROM THE DATE HEREOF AS TO THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND PAYABLE TO THE COMPLAINANTS, EITHER PARTY MAY APPLY TO HAVE THE BOARD MAKE SUCH DETERMINATION OF THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND WHICH ARE PAYABLE.

16893-69-U: TORONTO TYPOGRAPHICAL UNION, No. 91 (COMPLAINANT) v.
OFFSET MAKE UP LIMITED (RESPONDENT)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN
AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: TERENCE W. WILDE AND KENNETH E. PEATLING
FOR THE COMPLAINANT, W. G. PHELPS AND D. THOMAS FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P. J.
O'KEEFFE: DECEMBER 16, 1969.

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2. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

3. THE AGGRIEVED PERSON, JACK D. ADAMS, ALLEGED THAT HE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF

SECTIONS 50(A), 3 AND 48 OF THE LABOUR RELATIONS ACT IN THAT THE RESPONDENT REFUSED TO EMPLOY HIM ON OCTOBER 20, 1969 BECAUSE HE WAS A MEMBER OF A TRADE UNION. MR. ADAMS WAS A QUALIFIED PASTE-UP MAN AND HAD GAINED APPROXIMATELY SEVENTEEN YEARS' EXPERIENCE AT HIS TRADE IN THE PRINTING INDUSTRY AND WAS A MEMBER OF THE COMPLAINANT UNION. MR. ADAMS TESTIFIED THAT ON OCTOBER 14, 1969 HE TELEPHONED THE RESPONDENT COMPANY IN RESPONSE TO A NEWSPAPER ADVERTISEMENT PLACED BY THE RESPONDENT FOR "PASTE-UP MEN". THE PUBLISHED ADVERTISEMENT READS AS FOLLOWS:

PASTE-UP MEN

STEADY EMPLOYMENT WITH
MODERN NEWSPAPER PLANT,
PHONE MRS. THOMAS,
625-4700.

4. MRS. THOMAS WAS THE WIFE OF THE OWNER OF THE RESPONDENT COMPANY. THE RESPONDENT COMPANY HAD PURCHASED THE "COIN NEWS" FROM THE OAKVILLE BEAVER FOR WHOM MR. ADAMS HAD PREVIOUSLY WORKED. MR. ADAMS HAD SEEN MR. THOMAS SEVERAL TIMES PRIOR TO THE TIME THE RESPONDENT COMPANY TOOK OVER THE PUBLICATION OF THE COIN NEWS. WHEN MR. ADAMS TELEPHONED IN RESPONSE TO THE ADVERTISEMENT, HE OUTLINED HIS EXPERIENCE TO MRS. THOMAS. MRS. THOMAS REFERRED MR. ADAMS TO MR. RENAULT, THE RESPONDENT'S FOREMAN. MR. ADAMS FURTHER TESTIFIED THAT AFTER HE HAD APPRISED MR. RENAULT OF HIS EXPERIENCE, MR. RENAULT TOLD HIM HE WAS HIRED AT THE RATE OF \$3.00 PER HOUR AND REQUESTED THAT MR. ADAMS REPORT FOR WORK AT 8:45 A.M. ON MONDAY, OCTOBER 20TH. HE FURTHER TESTIFIED THAT ON SATURDAY, OCTOBER 18TH HE DROVE TO THE RESPONDENT'S PREMISES IN ORDER TO FIND OUT EXACTLY WHERE IT WAS LOCATED AND HOW LONG IT WOULD TAKE HIM TO DRIVE THERE MONDAY MORNING. ON ARRIVING AT THE PLANT ON SATURDAY, MR. ADAMS DISCOVERED THAT MR. RENAULT WAS AT THE PLANT. MR. ADAMS INTRODUCED HIMSELF AND MR. RENAULT SHOWED HIM THROUGH THE PLANT AND DESCRIBED IN CONSIDERABLE DETAIL THE TYPE OF WORK PERFORMED AT THE PLANT.

5. ON MONDAY, OCTOBER 20TH MR. ADAMS ARRIVED AT THE PLANT AT APPROXIMATELY 8:30 A.M. AFTER ENTERING THE PLANT MR. ADAMS HUNG UP HIS SWEATER, PLACED HIS LUNCH ON A TABLE AND INTRODUCED HIMSELF TO A MRS. CALDWELL WHO WAS ALSO COMMENCING WORK AT THE PLANT THAT DAY. AT ABOUT 8:45 A.M., WHILE HE WAS SPEAKING TO MRS. CALDWELL IN THE COMPOSING ROOM, MR. THOMAS APPEARED IN THE PASSAGEWAY BETWEEN THE COMPOSING ROOM AND THE RECEPTION OR OFFICE AREA AT THE FRONT OF THE BUILDING. MR. THOMAS CALLED MR. ADAMS BY NAME. WHEN MR. ADAMS WENT TO THE OFFICE AREA MR. THOMAS ACCUSED HIM OF BEING A UNION MAN AND MEMBER OF THE ITU. MR. ADAMS DENIED THAT HE WAS A MEMBER OF THE UNION. MR. THOMAS FURTHER STATED THAT HE HAD SEEN MR. ADAMS IN FRONT OF THE

GLOBE AND MAIL BUILDING WITH A PICKET SIGN AND THAT HE DID NOT WANT ANY UNION MEN WORKING AT HIS PLANT. MR. THOMAS ALSO STATED THAT IF HE CAUGHT ANY UNION MAN ON HIS PREMISES HE WOULD THROW HIM OUT. MR. THOMAS THEN THREW MR. ADAMS HIS SWEATER AND ORDERED MR. ADAMS OFF HIS PREMISES. MR. ADAMS AT NO TIME COMPLETED AN APPLICATION FOR EMPLOYMENT FORM.

6. MRS. CALDWELL CORROBORATED MR. ADAMS' TESTIMONY AND TESTIFIED THAT SHE HEARD MR. THOMAS ADDRESS MR. ADAMS IN A VERY ANGRY MANNER AND TELL HIM THAT HE DID NOT WANT "ANY UNION MAN HERE". MRS. CALDWELL TESTIFIED THAT SHE HAD NEVER BEEN REQUESTED TO SIGN AN APPLICATION FOR EMPLOYMENT FORM.

7. MR. RENAULT TESTIFIED ON BEHALF OF THE RESPONDENT. HE DENIED THAT HE HAD TOLD MR. ADAMS THAT HE WAS HIRED ON OCTOBER 14TH. MR. RENAULT TESTIFIED THAT HE HAD REQUESTED MR. ADAMS TO COME TO THE PLANT AT 9:00 A.M. ON OCTOBER 20TH IN ORDER TO FILL OUT AN APPLICATION FOR EMPLOYMENT FORM. MR. RENAULT CONFIRMED MR. ADAMS' EVIDENCE CONCERNING THE EVENTS WHICH TOOK PLACE ON SATURDAY, OCTOBER 18TH AT THE PLANT. HE FURTHER TESTIFIED THAT HE SAW MR. ADAMS AT THE PLANT ON MONDAY, OCTOBER 20TH BEFORE MR. THOMAS SPOKE TO MR. ADAMS. MR. RENAULT DID NOT SPEAK TO MR. ADAMS ON THE MONDAY MORNING. HE MERELY HANDED MR. ADAMS HIS LUNCH WHEN MR. ADAMS REQUESTED IT AS HE WAS BEING EJECTED FROM THE PLANT. MR. RENAULT ACKNOWLEDGED THAT HE HAD BEEN PRESENT WHEN MR. ADAMS WAS INTERVIEWED BY MR. THOMAS AND THAT MR. THOMAS HAD ASKED MR. ADAMS WHETHER OR NOT HE WAS A MEMBER OF ITU. HOWEVER, MR. RENAULT STATED THAT HE HAD NOT HEARD MR. THOMAS TELL MR. ADAMS THAT HE DID NOT WANT ANY UNION MEN WORKING THERE AND WOULD THROW THE UNION MEN OFF THE PROPERTY.

8. MR. RENAULT FURTHER TESTIFIED THAT ON OCTOBER 14TH HE HAD MERELY TOLD MR. ADAMS TO COME TO THE PLANT ON OCTOBER 20TH TO FILL OUT AN APPLICATION FOR EMPLOYMENT FORM. MR. RENAULT DENIED THAT HE HAD HIRED MR. ADAMS. IT WAS MR. RENAULT'S TESTIMONY THAT HE WISHED TO HAVE MR. ADAMS COMPLETE AN APPLICATION FOR EMPLOYMENT FORM SO THAT IT COULD BE RETAINED BY THE COMPANY ON FILE FOR FUTURE REFERENCE. MR. RENAULT TESTIFIED THAT HE HAD HIRED A PASTE-UP MAN ON OCTOBER 16TH AND ANOTHER PASTE-UP MAN ON OCTOBER 17TH AND THAT ALTHOUGH HE HAD INTERVIEWED MRS. CALDWELL ON OCTOBER 16TH FOR THE JOB OF PASTE-UP MAN HE HAD INFORMED HER ON OCTOBER 17TH THAT ALL THE OPENINGS HAD BEEN FILLED. MRS. CALDWELL HAD ACCEPTED THE POSITION OF PROOFREADER WHEN IT WAS OFFERED TO HER ON OCTOBER 17TH.

9. MR. THOMAS, ALTHOUGH PRESENT AT THE HEARING, WAS NOT CALLED TO TESTIFY.

10. THE RESPONDENT ARGUED THAT ON OCTOBER 20TH THERE WAS NO OPENING FOR A PASTE-UP MAN AND THAT MR. ADAMS HAD MERELY BEEN

REQUESTED TO COME TO THE PLANT ON THAT DATE TO COMPLETE AN APPLICATION FOR EMPLOYMENT FORM. IT WAS THE RESPONDENT'S POSITION THAT MR. ADAMS HAS MISUNDERSTOOD THE INSTRUCTIONS GIVEN TO HIM ON OCTOBER 14TH.

11. WE DO NOT ACCEPT THE RESPONDENT'S EXPLANATION IN THIS MATTER. IF, ON OCTOBER 14TH, MR. RENAULT HAD MERELY ASKED MR. ADAMS TO COME TO THE PLANT TO COMPLETE AN APPLICATION FOR EMPLOYMENT FORM, THE OBVIOUS QUESTION WHICH ARISES IS WHY DID MR. RENAULT SUGGEST THAT MR. ADAMS COME TO THE PLANT ON OCTOBER 20TH RATHER THAN PRIOR TO THAT DATE. ON MR. RENAULT'S OWN TESTIMONY TWO PASTE-UP MEN WERE HIRED AFTER OCTOBER 14TH. AGAIN, WHEN MR. ADAMS APPEARED AT THE PLANT ON SATURDAY, OCTOBER 18TH THERE WAS NO ATTEMPT BY MR. RENAULT TO OBTAIN AN APPLICATION FOR EMPLOYMENT FORM FOR MR. ADAMS TO COMPLETE AT THAT TIME. IN ADDITION, WHEN MR. RENAULT SAW MR. ADAMS AT THE PLANT BETWEEN 8:30 AND 8:45 A.M. ON MONDAY, OCTOBER 20TH HE DID NOT SPEAK TO MR. ADAMS OR INVITE HIM TO COMPLETE AN APPLICATION FORM AT THAT TIME.

12. WHILE THE ACTIONS OF MR. ADAMS WERE CONSISTENT WITH WHAT ONE WOULD EXPECT FROM A PERSON WHO HAD BEEN HIRED IN THE MANNER DESCRIBED BY HIM, MR. RENAULT'S ACTIONS WERE NOT CONSISTENT WITH HIS EXPLANATION OF WHAT HAD TRANSPIRED.

13. IN ADDITION, MRS. CALDWELL, WHO APPEARED TO BE A MOST CREDITABLE WITNESS, CORROBORATED MR. ADAMS' TESTIMONY CONCERNING THE STATEMENT MADE BY MR. THOMAS THAT HE WOULD NOT HAVE A UNION MAN WORKING THERE. IT IS NOT WITHOUT INTEREST TO NOTE THAT MR. THOMAS WHO WAS PRESENT AT THE HEARING DID NOT TESTIFY OR OFFER ANY DENIAL OF THE STATEMENTS ATTRIBUTED TO HIM.

14. WE THEREFORE ACCEPT THE COMPLAINANT'S EVIDENCE WHERE SUCH EVIDENCE DIFFERS FROM THE EVIDENCE ADDUCED BY THE RESPONDENT.

15. AFTER MR. ADAMS WAS REFUSED EMPLOYMENT BY THE RESPONDENT HE ATTEMPTED TO GAIN ALTERNATE EMPLOYMENT BY IMMEDIATELY PRESENTING HIMSELF AT THE UNION OFFICE BY OFFERING HIS SERVICES THROUGH THE UNION WHICH ACTS AS A HIRING HALL FOR UNION MEMBERS. HE ALSO SOUGHT EMPLOYMENT BY LOOKING AT THE HELP WANTED ADS WHICH APPEAR IN THE DAILY PRESS. MR. ADAMS DID NOT REGISTER WITH CANADA MANPOWER NOR DID HE SEEK EMPLOYMENT OUTSIDE HIS CRAFT. ON NOVEMBER 26, 1969 MR. ADAMS FINALLY OBTAINED EMPLOYMENT IN HIS CRAFT AT AN ESTABLISHMENT WHICH PAID THE RATE OF \$4.59 PER HOUR. MR. ADAMS STATED THAT HE WAS SATISFIED WITH THE JOB HE NOW HAS.

16. ON ALL THE EVIDENCE BEFORE US WE MUST FIND THAT THE RESPONDENT, THROUGH ITS FOREMAN, HAD HIRED MR. ADAMS ON OCTOBER 14TH AND HAD SCHEDULED HIM TO REPORT FOR WORK ON OCTOBER 20TH. MR. ADAMS WAS REFUSED EMPLOYMENT ON OCTOBER 20TH BY MR. THOMAS BECAUSE MR. THOMAS KNEW HIM TO BE A UNION MAN. THE RESPONDENT'S ACTIONS IN THIS MATTER ARE CONTRARY TO THE

PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT AND MR. ADAMS IS THEREFORE ENTITLED TO COMPENSATION. BECAUSE MR. ADAMS HAS EXPRESSED SATISFACTION WITH THE ALTERNATE EMPLOYMENT WHICH HE FOUND ON OCTOBER 26TH WHICH PAYS SUBSTANTIALLY MORE THAN THE RESPONDENT HAD INTENDED TO PAY, THERE WILL BE NO DIRECTION THAT THE RESPONDENT EMPLOY MR. ADAMS.

17. WHILE THE RESPONDENT ARGUED THAT MR. ADAMS DID NOT MITIGATE HIS LOSS IN VIEW OF THE FACT THAT HE DID NOT REGISTER WITH CANADA MANPOWER OR ATTEMPT TO FIND EMPLOYMENT OUTSIDE HIS CRAFT, WE CANNOT GIVE EFFECT TO THE RESPONDENT'S ARGUMENT IN THE CIRCUMSTANCES OF THIS CASE. ALTHOUGH CANADA MANPOWER IS A NORMAL SOURCE OF EMPLOYMENT FOR THE GENERAL WORKER, THE UNION OFFICE IS THE USUAL SOURCE OF JOBS FOR A WORKER IN MR. ADAMS' CRAFT. IF MR. ADAMS' UNEMPLOYMENT HAD PERSISTED FOR A LONG PERIOD, WE MIGHT HAVE FOUND THAT HE SHOULD HAVE SOUGHT WORK OUTSIDE HIS CRAFT. HOWEVER, SINCE THE PERIOD WITH WHICH WE ARE HERE CONCERNED IS LESS THAN ONE AND ONE-HALF MONTHS, WE ARE OF OPINION THAT MR. ADAMS ACTED REASONABLE IN HOLDING OUT FOR A JOB IN HIS CRAFT. WE ARE THEREFORE OF OPINION THAT MR. ADAMS MADE A REASONABLE EFFORT TO MITIGATE HIS LOSS IN THE CIRCUMSTANCES OF THIS CASE.

18. WE THEREFORE DIRECT THAT THE RESPONDENT PAY TO JACK D. ADAMS THE SUM OF \$612.00 BEING THE AMOUNT OF THE LOSS OF EARNINGS SUSTAINED BY HIM BY REASON OF HIS HAVING BEEN REFUSED EMPLOYMENT CONTRARY TO SECTION 50(A) OF THE ACT BETWEEN OCTOBER 20, 1969 AND NOVEMBER 26, 1969.

DECISION OF BOARD MEMBER H. F. IRWIN: DECEMBER 16, 1969.

1. I DISSENT IN RESPECT OF THE AMOUNT OF COMPENSATION TO BE AWARDED TO THE AGGRIEVED EMPLOYEE, MR. JACK D. ADAMS.

2. AS MR. ADAMS HAD NOT WORKED FOR THE COMPANY PREVIOUSLY, MANAGEMENT HAD HAD NO OPPORTUNITY TO APPRAISE THE QUALITY AND QUANTITY OF WORK HE COULD PERFORM, IF HE REPORTED FOR WORK ON TIME AND WAS PUNCTUAL IN HIS ATTENDANCE, OR IF HE WAS CO-OPERATIVE AND COMPATIBLE WITH THE OTHER EMPLOYEES WITH WHOM HE WOULD WORK. IF, IN ITS OPINION, ANY OF THESE WORK PRACTICES WERE UNSATISFACTORY, THE RESPONDENT EMPLOYER COULD HAVE DISPENSED WITH MR. ADAMS' SERVICES ON ONE WEEK'S NOTICE OR BY GIVING HIM ONE WEEK'S PAY IN LIEU OF NOTICE.

3. ACCORDINGLY, I WOULD HAVE AWARDED MR. ADAMS COMPENSATION EQUIVALENT TO ONE WEEK'S PAY COMPUTED AT HIS REGULAR RATE OF \$3.00 PER HOUR FOR THE NUMBER OF HOURS IN HIS STANDARD WORK WEEK.

16914-69-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SHOPPERS DRUG MART (RESPONDENT)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE

APPEARANCES AT THE HEARING: IAN SCOTT AND CLIFFORD EVANS FOR THE COMPLAINANT, J. B. NOONAN FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 22ND, 1969.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT HAS ALLEGED THAT THE AGGRIEVED PERSON, MRS. G. POULTON, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48 AND 50 OF THE ACT.

2. MRS. POULTON WAS FIRST EMPLOYED AT THE RESPONDENT'S STORE ON FEBRUARY 25, 1969, AT WHICH TIME SHE WORKED TO PREPARE THE STORE FOR OPENING ON MARCH 6TH. WHEN THE STORE OPENED MRS. POULTON WAS EMPLOYED FULL-TIME AS A CASHIER. AFTER WORKING APPROXIMATELY SEVEN WEEKS MRS. POULTON'S BABY BECAME ILL AND SHE WAS FORCED TO QUIT HER EMPLOYMENT IN ORDER TO LOOK AFTER HER CHILD. WHEN THE CHILD RECOVERED MRS. POULTON AGAIN SOUGHT EMPLOYMENT WITH THE RESPONDENT, HOWEVER, THERE WERE NO OPENINGS AT THAT TIME AND MR. MILLER, THE PROPRIETOR OF THE RESPONDENT, AGREED TO CONTACT HER WHEN AN OPENING OCCURRED.

3. DURING THE LATTER PART OF AUGUST, MR. MILLER CONTACTED MRS. POULTON AND ADVISED HER THAT ALTHOUGH HE HAD NO OPENING FOR A FULL-TIME EMPLOYEE, THERE WAS AN OPENING FOR A PART-TIME CASHIER. MRS. POULTON ACCEPTED THE POSITION OF PART-TIME CASHIER AND COMMENCED WORK ON SEPTEMBER 2. MRS. POULTON WORKED AN AVERAGE OF 12 TO 15 HOURS PER WEEK AS A PART-TIME CASHIER DURING THE MONTH OF SEPTEMBER.

4. ANOTHER EMPLOYEE OF THE RESPONDENT, MRS. MCINTYRE, WHO WAS EMPLOYED AS A "FLOAT" WAS NEARING THE END OF HER TERM OF PREGNANCY AND HAD THEREFORE REQUESTED SHORTER WORKING HOURS. MR. MILLER SWITCHED THE JOBS OF MRS. MCINTYRE AND MRS. POULTON. MRS. MCINTYRE TOOK OVER THE JOB OF PART-TIME CASHIER AND MRS. POULTON TOOK OVER THE FULL-TIME JOB OF FLOAT ON MONDAY, OCTOBER 6TH. THE DUTIES OF A FLOAT INCLUDED WORK IN THE DISPENSERY, COSMETICS DEPARTMENT, STOCKROOM AND AS CASHIER. SHE IS ALSO REQUIRED TO GIVE ASSISTANCE TO CUSTOMERS.

5. ON TUESDAY, OCTOBER 7TH, MR. JURCHUK, A BUSINESS AGENT OF THE COMPLAINANT, APPROACHED MR. MILLER AT THE STORE AND PRESENTED HIS BUSINESS CARD. MR. JURCHUK ADVISED MR. MILLER THAT HE WOULD BE CONTACTING MR. MILLER'S EMPLOYEES AND MR. MILLER TOLD HIM THAT HE DID NOT WANT MR. JURCHUK APPROACHING THE EMPLOYEES IN THE STORE ON COMPANY TIME.

6. MR. JURCHUK INTRODUCED HIMSELF TO MRS. POULTON IN THE RESTAURANT WHICH IS LOCATED A SHORT DISTANCE FROM THE RESPONDENT'S STORE ON TUESDAY, OCTOBER 7TH. AT THAT TIME MRS. POULTON INDICATED THAT SHE DID NOT WHICH TO DISCUSS JOINING THE COMPLAINANT UNION UNTIL SHE HAD HAD AN OPPORTUNITY TO DISCUSS THE MATTER WITH HER

FELLOW EMPLOYEES. SHE THEREFORE SUGGESTED TO MR. JURCHUK THAT HE COME TO HER HOME THAT EVENING WHEN HER HUSBAND WOULD BE PRESENT IN ORDER TO DISCUSS THE MATTER FURTHER. MR. JURCHUK LEFT A BROCHURE WITH MRS. POULTON. THE BROCHURE CONTAINED INFORMATION ABOUT THE UNION AND THE ALLEGED ADVANTAGES OF JOINING THE UNION. ON HER RETURN TO WORK MRS. POULTON ADVISED HER FELLOW EMPLOYEES OF THE FACT THAT SHE HAD BEEN APPROACHED BY A UNION REPRESENTATIVE AND THAT SHE HAD AN APPOINTMENT WITH HIM THAT EVENING. SHE INDICATED TO THE EMPLOYEES THAT SHE WAS INTERESTED IN WHAT THE UNION HAD TO OFFER AND THAT IT SOUNDED GOOD TO HER. IT SHOULD BE NOTED AT THIS TIME THAT WHEN MR. MILLER TESTIFIED, WHILE HE WAS VERY DEFINITE ABOUT DATES, HE INDICATED THAT MRS. POULTON COMMENCED HER FULL-TIME WORK AS A FLOAT ON MONDAY, OCTOBER 3RD AND THAT HE HAD BEEN CONTACTED BY MR. JURCHUK ON TUESDAY, OCTOBER 4TH. HIS EVIDENCE IN THIS REGARD IS NOT IN CONFLICT WITH MRS. POULTON'S AS FAR AS THE DAY OF THE WEEK IS CONCERNED BUT WE PREFER MRS. POULTON'S EVIDENCE AS TO THE DATE OF THE MONTH SINCE HER EVIDENCE IS CORROBORATED BY THE CALENDAR.

7. MRS. POULTON TESTIFIED THAT ON WEDNESDAY, OCTOBER 8TH, AS SHE WAS IN THE PROCESS OF PUNCHING IN AT THE COMMENCEMENT OF HER SHIFT IMMEDIATELY PRIOR TO 1:00 P.M., MR. MILLER STATED TO THE EMPLOYEES WHO WERE IN THE VICINITY OF THE TIME CLOCK THAT HE HAD HEARD THAT "SOMEONE IN HERE HAS BEEN TALKING TO A UNION MAN". HE ALSO INDICATED THAT THE UNION MAN WOULD BE COMING TO THEIR HOMES AND HE WANTED THE EMPLOYEES TO TELL HIM WHAT THE UNION MAN SAID. MRS. POULTON ASKED MR. MILLER WHETHER OR NOT HE WOULD FIRE AN EMPLOYEE IF SHE SIGNED A CARD FOR THE UNION. MR. MILLER PAUSED AND THEN REPLIED, "No--NO I WOULDN'T FIRE ANYONE FOR SIGNING A CARD." MRS. POULTON STATED THAT HIS HESITATION CAUSED HER SOME CONCERN.

8. ABOUT 2:00 P.M. ON OCTOBER 8TH, MRS. POULTON WAS WORKING NEAR THE FRONT OF THE STORE WHEN SHE SAW MR. MILLER LEAVING. SHE CALLED TO HIM AND INDICATED THAT SHE HAD BEEN TALKING TO THE UNION MAN. MR. MILLER TOOK HER ASIDE AND THEY DISCUSSED THE MATTER. MRS. POULTON INDICATED THAT SHE THOUGHT THAT THE UNION WOULD BE GOOD IN THE STORE. SHE ASKED MR. MILLER WHAT HE THOUGHT OF THE UNION IF HE WERE ONE OF THE EMPLOYEES. MR. MILLER STATED THAT HE WAS NOT IN FAVOUR OF THE UNION AND THAT THE UNION WOULD BREAK UP THE PERSONAL RELATIONSHIP THAT EXISTED BETWEEN HE AND THE EMPLOYEES AND THE EMPLOYEES WOULD LOSE THE ABILITY TO CONTACT HIM WITH RESPECT TO THEIR PROBLEMS. MRS. POULTON INDICATED THAT IF THE UNION CAME IN THE EMPLOYEES WOULD LIKELY BE PAID HIGHER WAGES. MR. MILLER POINTED OUT THAT IF THAT WERE THE CASE THE EMPLOYEES WOULD HAVE TO WORK MUCH HARDER AND HE MAY HAVE TO RELEASE ONE OF THE GIRLS SINCE THE INDIVIDUAL EMPLOYEE WOULD HAVE TO DO MORE WORK. MRS. POULTON INDICATED THAT SHE HAD NOT SIGNED FOR THE UNION AND MR. MILLER REPLIED THAT THAT WAS GOOD. HE ASKED MRS. POULTON IF SHE HAD GIVEN THE UNION MAN ANY NAMES, TO WHICH SE REPLIED THAT SHE HAD GIVEN FIRST NAMES BUT NOT LAST NAMES OR ADDRESSES. MRS. POULTON

ALSO INDICATED TO MR. MILLER THAT THE UNION MAN WAS COMING BACK TO HER HOME THE FOLLOWING WEEK, AT WHICH TIME SHE WOULD RETURN THE PAPERS THAT HAD BEEN LEFT WITH HER. MR. MILLER SUGGESTED THAT MRS. POULTON REFUSE TO LET HIM IN THE HOUSE WHEN HE CAME TO HER DOOR. MRS. POULTON INDICATED THAT SHE AGREED WITH HIS SUGGESTION AND THAT SHE NO LONGER WAS INTERESTED IN THE UNION. MR. MILLER STATED THAT HE HOPED TO EVENTUALLY BE IN A POSITION TO PAY HIGHER WAGES. MR. MILLER ALSO INDICATED THAT HE KNEW MRS. POULTON TO BE A GOOD WORKER AND THAT THE REASON HE HAD GIVEN HER THE JOB OF FLOAT WAS THAT HE COULD TRUST HER.

9. ON WEDNESDAY OR THURSDAY OF THE FOLLOWING WEEK, MR. MILLER CALLED MRS. POULTON ASIDE AND TOLD HER THAT HE HAD BAD NEWS FOR HER. HE SAID THAT HE HAD ORDERS FROM HEAD OFFICE TO LAY HER OFF. WHEN HE WAS ASKED THE REASON, MR. MILLER STATED THAT BUSINESS HAD NOT PICKED UP AFTER THE SUMMER MONTHS AS HE HAD HOPED AND THAT SINCE SHE HAD THE LEAST SENIORITY SHE WAS THE ONE TO BE LAID OFF. MRS. POULTON THEN ASKED WHETHER OR NOT THERE WAS ANY CHANCE THAT HE MIGHT NEED HER DURING THE CHRISTMAS RUSH, TO WHICH MR. MILLER REPLIED THAT HE WOULD KEEP HER IN MIND. MR. MILLER ADVISED HER THAT SHE WOULD BE LAID OFF AS OF SATURDAY, OCTOBER 18TH.

10. SUBSEQUENT TO OCTOBER 18TH, MRS. POULTON LEARNED THAT MR. MILLER HAD INFORMED A REPRESENTATIVE OF THE LABOUR RELATIONS BOARD THAT HE HAD FIRED MRS. POULTON. MRS. POULTON DID NOT BELIEVE THIS INFORMATION AND TELEPHONED MR. MILLER FOR CONFIRMATION. MR. MILLER STATED THAT HE HAD FIRED HER BUT THAT HE DID NOT INFORM HER OF THIS AT THE TIME BECAUSE HE DID NOT WANT TO HURT HER FEELINGS. DURING THE TELEPHONE CONVERSATION, MR. MILLER INDICATED THAT HE HAD FIRED HER BECAUSE SHE HAD NOT DONE HER JOB AND HE THEN CRITICIZED HER WORK AND STATED THAT SHE HAD STOOD AROUND WITH HER ARMS FOLDED AND HAD NOT WORKED HARD ENOUGH.

11. WHILE MRS. POULTON WORKED AS A PART-TIME CASHIER SHE WAS PAID \$1.45 AN HOUR. SHE STATED THAT WHEN SHE COMMENCED WORK AS FULL-TIME CASHIER IN OCTOBER HER PAY WAS INCREASED TO \$1.50 AN HOUR. HOWEVER, A PAY INCREASE WAS GRANTED AFTER SHE HAD THE JOB FOR ONE WEEK AND SHE WAS EARNING \$1.55 AN HOUR AT THE TIME OF HER LAYOFF.

12. MR. MILLER TESTIFIED THAT HE ADVISED MRS. POULTON THAT SHE WAS LAID OFF RATHER THAN DISCHARGED BECAUSE HE TOOK THE "GENTLEMANLY APPROACH", HOWEVER, HE HAD ACTUALLY DECIDED TO DISCHARGE HER BECAUSE SHE LACKED SUFFICIENT INITIATIVE TO CARRY OUT THE FUNCTIONS OF A FLOAT AND HER PERFORMANCE AS A FLOAT WAS "COMPLETELY UNSATISFACTORY". HE ACCUSED HER OF BEING UNCOOPERATIVE AND TAKING A SUPERIOR POSITION BY LORDING IT OVER THE OTHER EMPLOYEES. IT DOES NOT APPEAR FROM THE EVIDENCE, HOWEVER, THAT MRS. POULTON WAS EVER CRITICIZED DURING THE TERM OF HER EMPLOYMENT NOR WERE ANY OF HER ALLEGED INSUFFICIENCIES BROUGHT TO HER ATTENTION. MR. MILLER CONFIRMED MOST OF THE EVIDENCE

OF MRS. POULTON, HOWEVER, BUT PLACED DIFFERENT EMPHASIS ON THE REMARKS HE MADE. MR. MILLER DENIED THAT HE TOLD MRS. POULTON SHE WAS LAID OFF BECAUSE OF "ORDER FROM HEAD OFFICE". IT WAS MR. MILLER'S POSITION THAT AS A SOLE PROPRIETOR HE HAD COMPLETE AUTHORITY OVER EMPLOYMENT PRACTICES IN THE STORE AND THAT HE OPERATED THE BUSINESS UNDER A FRANCHISE ARRANGEMENT WITH SHOPPERS DRUG MART. HE ACKNOWLEDGED, HOWEVER, THAT HE DID PARTICIPATE IN THE LABOUR RELATIONS PROGRAM PROVIDED BY SHOPPERS DRUG MART AND HAD ATTENDED A MEETING OF STORE MANAGERS SPONSORED BY THAT COMPANY.

13. SINCE MRS. POULTON HAS BEEN DISCHARGED, MR. MILLER HAS HIRED ONE HIGH SCHOOL GIRL AS A TRAINEE CASHIER FOR THE CHRISTMAN RUSH; ANOTHER HIGH SCHOOL GIRL HAS BEEN HIRED AS A PART-TIME CASHIER AND SHE WORKS 9 TO 12 HOURS PER WEEK; A PART-TIME CASHIER WHO FORMERLY WORKED 15 HOURS PER WEEK IS NOW WORKING FULL TIME AND FINALLY, A FULL-TIME CASHIER IS NOW WORKING ADDITIONAL HOURS. MR. MILLER STATED THAT ALTHOUGH MRS. POULTON HAD PERFORMED SATISFACTORILY AS A CASHIER SHE WAS TOTALLY UNSATISFACTORY AND UNCOOPERATIVE AS A FLOAT. IN SUPPORT OF ITS POSITION THE RESPONDENT TENDERED THE FOLLOWING DOCUMENT SIGNED BY NINE FULL-TIME EMPLOYEES INCLUDING THE FOUR CASHIERS, THE HEAD CASHIER, THE HEAD COSMETICIAN, THE STOCK CHECKER, THE BOOKKEEPER AND THE FLOOR MANAGER. THE DOCUMENT READS AS FOLLOWS:

OSHAWA, ONTARIO
NOVEMBER 13, 1969

MR. MILLER, MANAGER
SHOPPERS DRUG MART
OSHAWA, ONTARIO.

DEAR MR. MILLER:

IT HAS COME TO THE ATTENTION, THAT GERALDINE POULTON, IS SEEKING RE-EMPLOYMENT WITH THIS STORE. WE, THE UNDERSIGNED STRONGLY OBJECT TO THIS, AS WE FOUND G. POULTON AN UN-COOPERATIVE CO-WORKER. WE FEEL THAT YOUR STORE IS LIKE A FAMILY AND WE LIKE THE ATMOSPHERE THAT PREVAILS WHEN ALL OF US ARE DOING JOBS ASSIGNED TO US. G. POULTON, IN SHIRKING HER DUTIES CREATED MORE WORK FOR US AND CREATED BAD FEELINGS.

14. THE HEAD COSMETICIAN IDENTIFIED HER SIGNATURE ON THE DOCUMENT AND TESTIFIED THAT THE DOCUMENT HAD BEEN PREPARED BY THE BOOKKEEPER. THE BOOKKEEPER WOULD APPEAR TO HAVE SOME AUTHORITY OVER THE CASHIERS. WHILE THE HEAD COSMETICIAN INDICATED THAT SHE FOUND THAT MRS. POULTON WAS SATISFACTORY IN MOST CASES, SHE DID NOT WANT TO BE TOLD DIFFERENT PROCEDURES AND SHE MADE HER JOB MORE DIFFICULT. HOWEVER, IN CROSS-EXAMINATION, IT WOULD APPEAR THAT THE EXTENT OF THE LACK OF COOPERATION OF MRS. POULTON IN SO FAR AS THE COSMETICS DEPARTMENT WAS CONCERNED WAS

THAT SHE WAS NOT VERY INTERESTED IN COSMETICS AND REFUSED TO WEAR THEM. IT ALSO APPEARED FROM HER TESTIMONY THAT ALTHOUGH MRS. POULTON HAD MADE INQUIRIES OF HER WITH RESPECT TO PERFUMES WHICH ARE SOLD IN THE COSMETICS DEPARTMENT AND REQUESTED LITERATURE ON THE SUBJECT, THE HEAD COSMETICIAN HAD NOT HAD AN OPPORTUNITY TO PROVIDE THIS INFORMATION TO MRS. POULTON BECAUSE SHE WAS TOO BUSY.

15. HAVING REGARD TO ALL THE EVIDENCE AND HAVING ASSESSED THE CREDIBILITY OF THE WITNESSES IN LIGHT OF THE MANNER IN WHICH THEY TESTIFIED AND THE CONSISTENCY OF THEIR EVIDENCE, WE FIND MRS. POULTON TO BE AN HONEST WITNESS WHO HAS ATTEMPTED TO TESTIFY IN A VERY FORTHRIGHT MANNER. HOWEVER, IN ASSESSING THE TESTIMONY OF MR. MILLER, WE FIND THAT THE POSITION HE TAKES WITH RESPECT TO THE DISCHARGE OF MRS. POULTON IS NOT CONSISTENT WITH HIS ACTIONS. MR. MILLER HAD WORKED WITH MRS. POULTON FOR APPROXIMATELY SEVEN WEEKS DURING THE TIME THE STORE WAS OPENED. HE HAD AN OPPORTUNITY TO ASSESS HER PERFORMANCE AND HER WORK HABITS AT THE TIME. SUBSEQUENTLY, HE RECALLED MRS. POULTON TO WORK AND SHE WORKED AS A PART-TIME CASHIER FOR APPROXIMATELY ONE MONTH PRIOR TO HER APPOINTMENT AS A FULL-TIME EMPLOYEE IN THE CLASSIFICATION OF "FLOAT". AGAIN MR. MILLER HAD AN OPPORTUNITY TO ASSESS HER PERFORMANCE DURING THIS LATTER PERIOD. HE IN FACT ADVISED HER THAT SHE WAS A GOOD WORKER AND WAS TRUSTWORTHY. EVEN AT THE HEARING MR. MILLER TESTIFIED THAT MRS. POULTON WAS A SATISFACTORY CASHIER. HOWEVER, HAVING APPOINTED MRS. POULTON TO A MORE DIFFICULT JOB AS FLOAT AND HAVING ASSESSED HER PERFORMANCE FOR A WEEK AND A HALF, IT APPEARS TO US THAT IT WOULD BE UNREASONABLE FOR MR. MILLER TO DISCHARGE HER FOR THE REASONS GIVEN WHEN HE REQUIRED THE SERVICES OF AT LEAST A PART-TIME CASHIER, WHICH FUNCTIONS SHE WAS ABLE TO SATISFACTORILY PERFORM. THERE WAS NO OFFER BY THE RESPONDENT TO RETURN HER TO HER JOB AS PART-TIME CASHIER NOR WAS THERE ANY CRITICISM OF HER JOB AS FLOAT WHILE SHE FUNCTIONED IN THAT POSITION. IT IS NORMAL TO EXPECT THAT A MANAGER WILL MANAGE AND WILL GIVE DIRECTION WERE REQUIRED. IF DIRECTIONS WERE REQUIRED TO CAUSE MRS. POULTON TO PROPERLY PERFORM THEY WERE NOT GIVEN IN THE PRESENT CASE. AGAIN, IT IS ALSO READILY APPARENT FROM THE STATEMENT WHICH WAS SUBMITTED BY THE RESPONDENT WHICH IS DATED NOVEMBER 13, 1969 THAT THE RESPONDENT HAS MERELY ATTEMPTED TO GILD THE LILY. IF MRS. POULTON WAS AS UNCOOPERATIVE AND TROUBLESOME AS THE STATEMENT WOULD LEAD US TO BELIEVE, THEN IT WOULD HAVE BEEN READILY APPARENT TO ANY MEMBER OF SUPERVISION THAT SHE WAS NOT THE PERSON TO BE PROMOTED TO THE POSITION OF FLOAT. THE FACT THAT CERTAIN EMPLOYEES HAVE SIGNED SUCH A STATEMENT ALONG WITH SUPERVISORY PERSONNEL DOES NOT ESTABLISH THE TRUTH OF THE CONTENTS OF THE STATEMENT. ON THE CONTRARY, IN THE CIRCUMSTANCES WE HAVE HERE, WHERE MANAGEMENT IS OBVIOUSLY OPPOSED TO THE EMPLOYEES JOINING A UNION AND WHERE AN EMPLOYEE HAS BEEN DISCHARGED WHO HAS HAS EXPRESSED INTEREST IN THE UNION, IT IS NOT ALL SUPRISING TO FIND THAT EMPLOYEES WOULD SIGN A STATEMENT IN THE TERMS SET OUT ABOVE WHERE THE STATEMENT ALSO CONTAINS THE SIGNATURES OF MANAGEMENT PERSONNEL.

IN ADDITION, THE TESTIMONY OF THE HEAD COSMETICIAN CONCERNING HER EXPERIENCE WITH MRS. POULTON DOES NOT SUPPORT THE STRONG LANGUAGE USED IN THE STATEMENT. WE CAN ONLY ASSUME THAT THE RESPONDENT CALLED THE BEST WITNESS IT HAD AMONG THE EMPLOYEES TO SUPPORT THE STATEMENT. IF THE EVIDENCE OF THE HEAD COSMETICIAN IS THE BEST EVIDENCE THEN THAT EVIDENCE TENDS TO ESTABLISH THAT THE STATEMENT DOES NOT REFLECT THE TRUE WISHES OF THE EMPLOYEES. WHATEVER THE SITUATION, WE ARE NOT IN THIS COMPLAINT CONCERNED WITH A POPULARITY CONTEST. OUR JURISDICTION IS TO DETERMINE THE TRUE REASONS FOR THE DISCHARGE OF MRS. POULTON.

16. ANOTHER FACTOR THAT WORKS AGAINST THE RESPONDENT'S POSITION IS THE STATEMENT MADE TO MRS. POULTON WHEN SHE WAS INFORMED OF HER DISCHARGE. AT THAT TIME MR. MILLER MADE NO CRITICISM OF HER WORK AND SIMPLY ADVISED THAT BECAUSE BUSINESS WAS SLOW THE RESPONDENT WAS FORCED TO LAY HER OFF. MR. MILLER HAS NOW CHANGED HIS POSITION. THE EVIDENCE CALLED BY THE RESPONDENT HAS FAILED TO SUPPORT THE POSITION NOW TAKEN BY THE RESPONDENT.

17. WE THEREFORE FIND THAT WHERE THE RESPONDENT'S EVIDENCE DIFFERS FROM THE EVIDENCE OF MRS. POULTON, WE PREFER THE EVIDENCE OF MRS. POULTON.

18. WE CANNOT ACCEPT THE RESPONDENT'S EXPLANATION AS TO THE REASONS FOR THE DISCHARGE OF MRS. POULTON. WE MUST FIND THAT IN VIEW OF THE FACT THAT MRS. POULTON HAD EXPRESSED INTEREST IN THE UNION AND HAD MADE HER INTEREST KNOWN TO MEMBERS OF MANAGEMENT AND OTHER EMPLOYEES, AND IN VIEW OF THE FACT THAT SHE HAD SATISFACTORILY PERFORMED AS A CASHIER AND IN THE ABSENCE OF ANY CONCRETE EVIDENCE TO ESTABLISH THAT SHE WAS "COMPLETELY UNSATISFACTORY" AS A FLOAT, AS ALLEGED BY THE RESPONDENT, WE MUST THEREFORE FIND THAT MRS. POULTON WAS DISCHARGED CONTRARY TO THE ACT.

19. HAVING REGARD TO ALL THE EVIDENCE, WE FIND THAT THE RESPONDENT, CONTRARY TO SECTION 50 OF THE ACT, REFUSED TO CONTINUE TO EMPLOY MRS. POULTON BECAUSE SHE WAS EXERCISING A RIGHT UNDER THE ACT.

20. THE BOARD THEREFORE DETERMINES THAT:

- (A) MRS. G. POULTON SHALL BE REINSTATED FORTHWITH IN THE POSITION SHE HELD AT THE TIME OF HER DISCHARGE;
- (B) THAT THE RESPONDENT PAY TO MRS. POULTON THE SUM OF \$458.80 FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY HER BETWEEN THE DATE OF HER DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER;

(c) THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING TO THE AMOUNT OF THE LOSS OF EARNINGS THAT MRS. POULTON SUSTAINED BY REASON OF HER HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN THE DATE OF THE HEARING AND THE DATE OF HER REIN-STATEMENT; AND

(d) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (c) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO MRS. POULTON.

16977-69-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V.
TORONTO WESTERN HOSPITAL (RESPONDENT)

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 2, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. A FIELD OFFICER WAS APPOINTED TO INQUIRE INTO THE COMPLAINT AND HE HAD NOW REPORTED TO THE BOARD. HIS REPORT CONSISTS OF THE STATEMENT OF THE AGGRIEVED PERSON TOGETHER WITH A LETTER FROM THE RESPONDENT HOSPITAL.

2. IT APPEARS FROM THE STATEMENT OF THE AGGRIEVED PERSON THAT HE WAS SUSPENDED FOR CERTAIN ALLEGED UNION ACTIVITIES ON THE PREMISES. IT ALSO APPEARS FROM HIS STATEMENT THAT THIS MATTER WAS SETTLED AFTER DISCUSSION WITH THE RESPONDENT AND THE AGGRIEVED AGREED TO RETURN TO WORK THE NEXT DAY WITHOUT PAY FOR HIS LOST TIME. HOWEVER, THE AGGRIEVED DID NOT REPORT FOR WORK THE NEXT DAY, WHICH WAS A WEDNESDAY, NOR DID HE REPORT FOR WORK THE BALANCE OF THAT WEEK.

3. BASED ON THE AGGRIEVED PERSON'S STATEMENT ALONE IT SEEMS CLEAR THAT THE REASON FOR TERMINATING HIS SERVICES WAS HIS FAILURE TO REPORT FOR WORK ON THE WEDNESDAY. THERE IS NOTHING IN THAT STATEMENT WHICH WOULD SUGGEST THAT HIS SERVICES WERE TERMINATED BECAUSE OF HIS UNION ACTIVITY. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE

CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE RULES OF PROCEDURE, THE COMPLAINT IS DISMISSED.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

17110(A)-69-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO. (COMPLAINANT) V. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS IRON SHIP BUILDERS BLACKSMITHS FORGERS & HELPERS, LOCAL 128 AND INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. J. CLARK AND D. H. STEVENS FOR THE COMPLAINANT; J. D. CARROLL AND S. PETRONSKI FOR INTERNATIONAL BROTHERHOOD OF BOILERMAKERS IRON SHIP BUILDERS BLACKSMITHS FORGERS & HELPERS, LOCAL 128; G. W. ALLEN AND J. TYE FOR INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786.

DECISION OF THE BOARD: DECEMBER 23, 1969,

1. THE COMPLAINANT IN ITS COMPLAINT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.
2. THE WORK IN DISPUTE IS THE INSTALLATION OF THE COMPLAINANT'S FALCONBRIDGE NICKEL MINES IRON ORE PROJECT OF THE COOLER COLLECTING TROUGH FOR THE PURPOSE OF COLLECTING WATER SLUICED OVER THE ROTARY COOLER BARREL. THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF THE WORK WHICH IS THE SUBJECT MATTER OF THE INSTANT DISPUTE.
3. THE COMPLAINANT IS PARTY TO COLLECTIVE AGREEMENTS WITH EACH OF THE RESPONDENT UNIONS. THE AGREEMENT BETWEEN THE COMPLAINANT AND INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786 (HEREINAFTER CALLED THE IRONWORKERS) CONTAINS THE FOLLOWING CLAUSE WITH RESPECT TO JURISDICTIONAL DISPUTES:

ARTICLE 19 - JURISDICTIONAL DISPUTES

ALL JURISDICTIONAL DISPUTES BETWEEN THE UNION AND ANY OTHER BUILDING AND CONSTRUCTION TRADES UNION INVOLVING ANY WORK UNDERTAKEN BY AN EMPLOYER THAT CANNOT BE SETTLED BY THE LOCAL UNIONS CONCERNED SHALL BE REFERRED BY SUCH LOCAL UNIONS TO THE RESPECTIVE INTERNATIONAL UNIONS FOR SETTLEMENT WITHOUT PERMITTING THE SAME TO INTERFERE IN ANY

WAY WITH THE PROGRESS AND EXECUTION OF THE WORK.
ANY DECISION REACHED SHALL BE FINAL AND BINDING
FOR THE PROJECT UPON THE LOCAL UNIONS AND THE
EMPLOYER CONCERNED EFFECTIVE FROM THE DATE THE
EMPLOYER IS SO NOTIFIED.

4. THE AGREEMENT BETWEEN THE COMPLAINANT AND INTERNATIONAL
BROTHERHOOD OF BOILERMAKERS IRON SHIP BUILDERS BLACKSMITHS FORGERS
& HELPERS, LOCAL 128 (HEREINAFTER CALLED THE BOILERMAKERS) DEALS
WITH THE SUBJECT OF JURISDICTIONAL DISPUTES IN ARTICLE 6 WHICH
READS AS FOLLOWS:

ARTICLE 6 - JURISDICTIONAL DISPUTES

1. ALL JURISDICTIONAL DISPUTES BETWEEN THE
UNION AND ANY OTHER BUILDING AND CONSTRUCTION
TRADES UNION THAT INVOLVES ANY WORK UNDERTAKEN
BY AN EMPLOYER SHALL BE ADJUSTED IN ACCORDANCE
WITH THE PROCEDURE ESTABLISHED BY THE NATIONAL
JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL
DISPUTES OR ANY OTHER PLAN OR METHOD OR PROCEDURE
WHICH MAY BE ADOPTED IN FUTURE BY THE BUILDING
CONSTRUCTION TRADES DEPARTMENT, A.F.L.-C.I.O.
SUCH DISPUTES WILL NOT INTERFERE IN ANY WAY
WITH THE PROGRESS AND PROSECUTION OF THE WORK.

2. WHEN A JURISDICTIONAL DISPUTE EXISTS BETWEEN
UNIONS AND UPON REQUEST BY THE UNION, THE
EMPLOYER SHALL FURNISH THE INTERNATIONAL OFFICES
OF THE UNION, A SIGNED LETTER ON EMPLOYER
STATIONERY, STATING THAT BOILERMAKERS WERE
EMPLOYED ON SPECIFIC TYPES OF WORK ON A GIVEN
PROJECT.

5. BOTH UNIONS AT THE HEARING TOOK THE POSITION THAT IN
VIEW OF THE FOREGOING CLAUSES AND THE PROVISIONS OF SECTION 66(8)
OF THE LABOUR RELATIONS ACT, THE BOARD WAS WITHOUT JURISDICTION TO
HEAR THE COMPLAINT AND ISSUE THE ORDER SOUGHT. THE COMPLAINANT ARGUED
THAT THE BOARD HAD JURISDICTION TO ISSUE THE ORDER SOUGHT. IT
ARGUED THAT INsofar AS THE IRONWORKERS' AGREEMENT IS CONCERNED THE
"RESPECTIVE INTERNATIONAL UNIONS" DO NOT CONSTITUTE A TRIBUNAL
WITHIN THE MEANING OF SECTION 66(8).

6. ASSUMING, WHILE ENTERTAINING CONSIDERABLE DOUBT IN THAT
REGARD, THAT THE "INTERNATIONAL UNIONS" REFERRED TO IN THE IRONWORKERS'
AGREEMENT CONSTITUTE A TRIBUNAL WITHIN THE MEANING OF SECTION 66(8),
THE BOARD FINDS THAT THE DISPUTE IS NOT ONE THAT CAN BE RESOLVED UNDER
THE TERMS OF THE RESPECTIVE COLLECTIVE AGREEMENTS SINCE THEY ARE NOT

BINDING UPON BOTH UNIONS AND EACH PROVIDES A DIFFERENT METHOD OF SETTLEMENT. THE BOARD THEREFORE FINDS THAT IT HAS JURISDICTION TO DEAL WITH THE COMPLAINT.

7. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

FRASER-BRACE ENGINEERING COMPANY, LIMITED SHALL CONTINUE TO ASSIGN THE WORK INVOLVED IN THE INSTALLATION ON THE COMPLAINANT'S FALCONBRIDGE NICKEL MINES IRON ORE PROJECT OF THE COOLER COLLECTING TROUGH FOR THE PURPOSE OF COLLECTING WATER SLUICED OVER THE ROTARY COOLER BARREL TO MEMBERS OF INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786.

8. THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

17110(B)-69-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO. (APPLICANT) V. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS IRON SHIP BUILDERS BLACKSMITHS FORGERS & HELPERS, LOCAL 128 (RESPONDENT)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER AND R. W. TEAGLE

APPEARANCES AT THE HEARING: A. J. CLARK AND D. H. STEVENS FOR THE APPLICANT, J. D. CARROLL AND S. PETRONSKI FOR THE RESPONDENT, G. W. ALLEN AND J. TYE FOR INTERNATIONAL ASSOCIATION BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786.

DECISION OF THE BOARD: DECEMBER 23, 1969.

1. THIS IS AN APPLICATION MADE PURSUANT TO SUBSECTION (3) OF SECTION 66 OF THE LABOUR RELATIONS ACT FOR A CEASE AND DESIST DIRECTION.

2. THE APPLICANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION THAT THE RESPONDENT CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF AN INTERIM ORDER OF EVEN DATE HEREWITH WHICH INTERIM ORDER WAS FILED IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT OF ONTARIO ON DECEMBER 23, 1969.

3. THE INTERIM ORDER, EXCLUSIVE OF THE REASONS ISSUED BY THE BOARD, READS:

FRASER-BRACE ENGINEERING COMPANY, LIMITED SHALL CONTINUE TO ASSIGN THE WORK INVOLVED IN THE INSTALLATION OF THE COMPLAINANT'S FALCONBRIDGE

NICKEL MINES IRON ORE PROJECT OF THE COOLER COLLECTING TROUGH FOR THE PURPOSE OF COLLECTING WATER SLUICED OVER THE ROTARY COOLER BARREL TO MEMBERS OF INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL ORNAMENTAL IRON WORKERS, LOCAL 786.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

4. HAVING CONSIDERED THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING CEASE AND DESIST DIRECTION:

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS IRON SHIP BUILDERS BLACKSMITHS FORGERS & HELPERS, LOCAL 128, ITS OFFICERS, OFFICIALS OR AGENTS SHALL CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF THE INTERIM ORDER OF THE BOARD DATED DECEMBER 23, 1969.

INDEXED ENDORSEMENTS

RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

16460-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (INTERVENER)

16468-69-R: THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION (APPLICANT) V. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

DECISION OF THE BOARD: DECEMBER 4, 1969.

1. THE CANADIAN UNION OF PUBLIC EMPLOYEES WAS CERTIFIED ON OCTOBER 2, 1969 AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT.

2. THE RESPONDENT BY LETTER DATED NOVEMBER 28, 1969 HAS REQUESTED THE BOARD TO DIRECT THAT THE PROVISIONS OF THE COLLECTIVE AGREEMENT WHICH HAD BEEN NEGOTIATED BETWEEN THE RESPONDENT AND THE PETERBOROUGH COUNTY BOARD OF EDUCATION CARETAKERS AND MAINTENANCE ASSOCIATION BE HONoured BY CANADIAN UNION OF PUBLIC EMPLOYEES. THIS AGREEMENT WOULD

HAVE EXPIRED ON DECEMBER 31, 1970 IN ACCORDANCE WITH ITS TERMS.

3. THE BOARD HAS NO JURISDICTION TO GRANT THE REQUEST MADE BY THE RESPONDENT IN THIS MATTER. SECTION 11 AND 12 OF THE LABOUR RELATIONS ACT READ AS FOLLOWS:

11. FOLLOWING CERTIFICATION, THE TRADE UNION SHALL GIVE THE EMPLOYER WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.

12. THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS FROM THE GIVING OF THE NOTICE OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

4. IT IS READILY APPARENT THAT THE BOARD HAS NO JURISDICTION TO MODIFY OR REVOKE THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE BOARD'S FUNCTION IS TO ADMINISTER THE ACT.

5. SINCE THE CANADIAN UNION OF PUBLIC EMPLOYEES HAS BEEN CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT, IT HAS THE OBLIGATION UNDER SECTION 11 OF THE ACT TO GIVE THE RESPONDENT WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. WHERE NOTICE TO BARGAIN HAS BEEN GIVEN THE PARTIES, PURSUANT TO THE PROVISIONS OF SECTION 12, SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT. THE CONTENTS OF THE COLLECTIVE AGREEMENT IS A MATTER FOR COLLECTIVE BARGAINING. APART FROM CERTAIN MANDATORY PROVISIONS WHICH EVERY COLLECTIVE AGREEMENT MUST CONTAIN (SEE SECTION 32 TO 39 OF THE ACT) THE BOARD HAS NOT JURISDICTION TO DICTATE TO ONE OF THE PARTIES WHAT PROVISIONS THAT PARTY SHOULD AGREE TO.

6. FOR THE REASONS SET OUT ABOVE, THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED.

16915-69-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V.
SCARBOROUGH GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION
OF OPERATING ENGINEERS LOCAL 796 (INTERVENER)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: DECEMBER 29, 1969.

1. THE BOARD BY ITS DECISION OF NOVEMBER 18, 1969 AUTHORIZED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE APPROPRIATENESS

OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS MATTER.

2. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED DECEMBER 1, 1969, THE APPLICANT BY LETTER DATED DECEMBER 8, 1969 REQUESTED A HEARING TO MAKE REPRESENTATIONS IN CONNECTION WITH THE EXAMINER'S REPORT. THE BOARD BY NOTICE DATED DECEMBER 15, 1969 LISTED THIS MATTER FOR HEARING "TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT OF THE EXAMINER DATED DECEMBER 1ST, 1969, IN THIS MATTER" ON MONDAY, THE 19TH DAY OF JANUARY, 1970.

3. THE APPLICANT BY LETTER DATED DECEMBER 16, 1969 HAS REQUESTED THE BOARD TO EXTEND THE TERMS OF THE EXAMINER'S APPOINTMENT TO INCLUDE AUTHORITY TO HEAR REPRESENTATIONS WITH RESPECT TO THE APPLICANT'S ALLEGATIONS OF COLLUSION BETWEEN THE INTERVENER AND THE RESPONDENT. THE APPLICANT HAS REQUESTED THE BOARD TO ENTERTAIN THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THIS MATTER AT THE HEARING SCHEDULED BY THE BOARD FOR JANUARY 19, 1970.

4. WE WOULD POINT OUT THAT IF THE BOARD DETERMINES THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE AND THAT IF THE APPROPRIATE BARGAINING UNIT SHOULD BE DESCRIBED IN TERMS USUALLY USED BY THE BOARD IN DESCRIBING HOSPITAL BARGAINING UNITS, THE APPLICANT WOULD HAVE LESS THAN FORTY-FIVE PER CENT AS MEMBERS AND ITS APPLICATION WOULD THEREFORE BE DISMISSED. IN SUCH CIRCUMSTANCES, THERE WOULD BE NO USEFUL PURPOSE SERVED BY THE APPLICANT CALLING EVIDENCE IN SUPPORT OF ITS ALLEGATIONS OF COLLUSION AND IMPROPER CONDUCT ON THE PART OF THE RESPONDENT AND THE INTERVENER. THE BOARD WOULD THEREFORE NOT HEAR ANY EVIDENCE WITH RESPECT TO SUCH ALLEGATIONS IN THIS CASE.

5. FOR THE ABOVE REASONS, THE HEARING SCHEDULED FOR JANUARY 19, 1970 WILL BE CONFINED TO HEARING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT OF THE EXAMINER DATED DECEMBER 1, 1969.

STATISTICAL TABLES FOR LAST 3 MONTHS (OCTOBER - DECEMBER) FISCAL YEAR 1969-70

TABLE 1

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		3RD 3 MONTHS FISCAL YEAR 1969-70	1ST 9 MONTHS FISCAL YEAR	
			1969-70	1968-69
I.	CERTIFICATION	224	780	757
II.	DECLARATION TERMINATING BARGAINING RIGHTS	40	64	50
III.	DECLARATION OF SUCCESSOR STATUS	9	15	11
IV.	DECLARATIONS THAT STRIKE UNLAWFUL	10	38	32
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	0	4	6
VI.	CONSENT TO PROSECUTE	17	99	87
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	32	130	129
VIII.	MISCELLANEOUS	21	62	51
TOTAL		353	1192	1123

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		3RD 3 MONTHS FISCAL YEAR 1969-70	1ST 9 MONTHS FISCAL YEAR	
			1969-70	1968-69
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		292	921	778

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF	
		3RD 3 MONTHS FISCAL YEAR 1969-70	1ST 9 MONTHS FISCAL YEAR
			1969-70 1968-69
I.	CERTIFICATION	238	783 786
II.	DECLARATION TERMINATING BARGAINING RIGHTS	35	60 42
III.	DECLARATION OF SUCCESSOR STATUS	9	28 13
IV.	DECLARATION THAT STRIKE UNLAWFUL	18	42 32
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	1	5 5
VI.	CONSENT TO PROSECUTE	31	102 80
VII.	COMPLAINT OF UNFAIR PRATICE IN EMPLOYMENT (SECTION 65)	48	141 149
VIII.	MISCELLANEOUS	24	81 41
TOTAL		404	1242 1148

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSTIONS

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	3RD 3 MTHS	1ST 9 MTHS	F.Y.	3RD 3 MTHS	1ST 9 MTHS	F.Y.
	FISCAL YEAR			FISCAL YEAR		
	1969-70	1969-70	1968-69	1969-70	1969-70	1968-69
I. <u>CERTIFICATION</u>						
GRANTED	163	538	540	3823	16834	17361
DISMISSED	44	148	176	1957	5879	6046
WITHDRAWN	31	97	70	609	1500	1115
TOTAL	<u>238</u>	<u>783</u>	<u>786</u>	<u>6389</u>	<u>24213</u>	<u>24522</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	14	26	23	529	917	584
DISMISSED	21	34	15	130	271	534
WITHDRAWN	0	0	4	0	18	108
TOTAL	<u>35</u>	<u>60</u>	<u>42</u>	<u>659</u>	<u>1206</u>	<u>1226</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

	3RD 3 MONTHS FISCAL YEAR <u>1969-70</u>	1ST 9MTHS FISCAL YEAR	
		<u>1969-70</u>	<u>1968-69</u>
I. <u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>			
GRANTED	0	1	1
DISMISSED	0	7	2
WITHDRAWN	<u>18</u>	<u>34</u>	<u>29</u>
TOTAL	18	42	32
	<u>==</u>	<u>==</u>	<u>==</u>
V. <u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>			
GRANTED	0	1	0
DISMISSED	1	3	3
WITHDRAWN	<u>0</u>	<u>1</u>	<u>2</u>
TOTAL	1	5	5
	<u>==</u>	<u>==</u>	<u>==</u>
V. <u>CONSENT TO PROSECUTE</u>			
GRANTED	4	37	22
DISMISSED	5	11	12
WITHDRAWN	<u>22</u>	<u>54</u>	<u>46</u>
TOTAL	<u>31</u>	<u>102</u>	<u>80</u>
	<u>==</u>	<u>==</u>	<u>==</u>
I. <u>COMPLAINT OF UNFAIR</u> <u>PRACTICE IN EMPLOYMENT</u> <u>(SECTION 65)</u>			
GRANTED	18	31	8
DISMISSED	8	28	37
WITHDRAWN	<u>22</u>	<u>82</u>	<u>104</u>
TOTAL	48	141	149
	<u>==</u>	<u>==</u>	<u>==</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

<u>CERTIFICATION AFTER VOTE*</u>	<u>NUMBER OF VOTES</u>		
	<u>3RD 3 MONTHS</u>	<u>1ST 9 MONTHS FISCAL YEAR</u>	
	<u>FISCAL YEAR</u> <u>1969-70</u>	<u>1969-70</u>	<u>1968-69</u>
PRE-HEARING VOTE	4	18	12
POST-HEARING VOTE	13	23	37
BALLOTS NOT COUNTED	0	0	0
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	4	9	4
POST-HEARING VOTE	10	37	28
BALLOTS NOT COUNTED	<u>0</u>	<u>1</u>	<u>1</u>
TOTAL	<u>31</u>	<u>88</u>	<u>82</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATIONS VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>3RD 3 MONTHS</u>	<u>1ST 9 MTHS FISCAL YEAR</u>	
	<u>FISCAL YEAR</u> <u>1969-70</u>	<u>1969-70</u>	<u>1968-69</u>
*RESPONDENT UNION SUCCESSFUL	3	5	2
RESPONDENT UNION UNSUCCESSFUL	<u>5</u>	<u>11</u>	<u>16</u>
TOTAL	<u>8</u>	<u>16</u>	<u>18</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

BINDING SECT. APR 7 1972

